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**U.S. Bankruptcy Court
Eastern District of Michigan (Detroit)
Bankruptcy Petition #: 13-53846-swr**

Date filed: 07/18/2013

Assigned to: Judge Steven W. Rhodes
Chapter 9
Voluntary
No asset

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Filing Date	#	Docket Text
12/23/2013	<u>2299</u>	<p>Transcript regarding Hearing Held 12/17/13 RE: Evidentiary Hearing re. Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. Sections 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Post-Petition Financing, (II) Granting Liens and Providing Superpriority Claims Status and (III) Modifying Automatic Stay (DKT#1520); Motion of the Debtor for Entry of an Order (I) Authorizing the Assumption of that Certain Forbearance and Optional Termination Agreement Pursuant to Section 365(a) of the Bankruptcy Code, (II) Approving Such Agreement Pursuant to Rule 9019, and (III) Granting Relreated Relief (DKT#17); Corrected Motion for Entry of an Order (I) Authorizing the Assumption of that Certain Forbearance and Optional Termination Agreement Pursuant to Section 365(a) of the Bankruptcy Code, (II) Approving Such Agreement Pursuant to Rule 9019, and (III) Granting Relreated Relief (DKT#157). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 91 DAYS AFTER THE DATE OF FILING, TRANSCRIPT RELEASE DATE IS 03/24/2014. Until that time, the transcript may be viewed at the Clerk's Office by parties who do not receive electronic notice and participated in the proceeding. A copy of the transcript may be purchased from the official court transcriber Lois Garrett at 517.676.5092. (RE: related document(s) 2196 Transcript Request, 2203 Transcript Request, 2207 Transcript Request, 2208 Transcript Request, 2216 Transcript Request, 2293 Transcript Request). Redaction Request Due By 01/13/2014. Redacted Transcript Submission Due By 01/21/2014. Transcript access will be restricted through 03/24/2014. (Garrett, Lois) (Entered: 12/23/2013)</p>
12/26/2013	<u>2311</u>	<p>Transcript regarding Hearing Held 12/20/13 RE: Status Conference. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 91 DAYS AFTER THE DATE OF FILING, TRANSCRIPT RELEASE DATE IS 03/27/2014. Until that time, the transcript may be viewed at the Clerk's Office by parties who do not receive electronic notice and participated in the proceeding. A copy of the transcript may be purchased from the official court transcriber Lois Garrett at 517.676.5092. (RE: related document(s) 2296 Transcript Request). Redaction Request Due By 01/16/2014. Redacted Transcript Submission Due By 01/23/2014. Transcript access will be restricted through 03/27/2014. (Garrett, Lois) (Entered: 12/26/2013)</p>
01/10/2014	<u>2447</u>	<p>Transcript regarding Hearing Held 01/03/14 RE: Evidentiary Hearing re. Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. Sections 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Post-Petition Financing, (II) Granting Liens and Providing Superpriority Claims Status and (III) Modifying Automatic Stay (DKT#1520); Motion of the Debtor for Entry of an Order (I) Authorizing the Assumption of that Certain Forbearance and Optional Termination Agreement Pursuant to Section 365(a) of the Bankruptcy Code, (II) Approving Such Agreement Pursuant to Rule 9019, and (III) Granting</p>

Released Relief (DKT#17); Corrected Motion for Entry of an Order (I) Authorizing the Assumption of that Certain Forbearance and Optional Termination Agreement Pursuant to Section 365(a) of the Bankruptcy Code, (II) Approving Such Agreement Pursuant to Rule 9019, and (III) Granting Releted Relief (DKT#157). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 91 DAYS AFTER THE DATE OF FILING, TRANSCRIPT RELEASE DATE IS 04/11/2014. Until that time, the transcript may be viewed at the Clerk's Office by parties who do not receive electronic notice and participated in the proceeding. A copy of the transcript may be purchased from the official court transcriber Lois Garrett at 517.676.5092. (RE: related document(s) [2382](#) Transcript Request, [2405](#) Transcript Request, [2409](#) Transcript Request, [2410](#) Transcript Request, [2412](#) Transcript Request, [2420](#) Transcript Request, [2421](#) Transcript Request, [2446](#) Transcript Request). Redaction Request Due By 01/31/2014. Redacted Transcript Submission Due By 02/7/2014. Transcript access will be restricted through 04/11/2014. (Garrett, Lois) (Entered: 01/10/2014)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. December 17, 2013
Debtor. . 9:01 a.m.
.

EVIDENTIARY HEARING RE. MOTION OF THE DEBTOR FOR A FINAL ORDER PURSUANT TO 11 U.S.C. SECTIONS 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) APPROVING POST-PETITION FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY CLAIMS STATUS AND (III) MODIFYING AUTOMATIC STAY (DKT#1520)

MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER (I) AUTHORIZING THE ASSUMPTION OF THAT CERTAIN FORBEARANCE AND OPTIONAL TERMINATION AGREEMENT PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE, (II) APPROVING SUCH AGREEMENT PURSUANT TO RULE 9019, AND (III) GRANTING RELATED RELIEF (DKT#17)

CORRECTED MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE ASSUMPTION OF THAT CERTAIN FORBEARANCE AND OPTIONAL TERMINATION AGREEMENT PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE, (II) APPROVING SUCH AGREEMENT PURSUANT TO RULE 9019, AND (III) GRANTING RELATED RELIEF (DKT#157)

BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE CLERK: All rise. Court is in session. Please
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: Good morning. Let me ask participating
4 counsel to put their appearances on the record, please.

5 MS. BALL: Corinne Ball of Jones Day for the City of
6 Detroit.

7 THE COURT: Yes. We should use the lectern mike,
8 please.

9 MS. BALL: Good morning, your Honor. Corinne Ball
10 of Jones Day for the City of Detroit.

11 MR. SHUMAKER: Good morning, your Honor. Greg
12 Shumaker of Jones Day for the City of Detroit.

13 MR. STEWART: Good morning, your Honor. Geoffrey
14 Stewart, Jones Day, City of Detroit.

15 MR. HAMILTON: Good morning, your Honor. Robert
16 Hamilton of Jones Day on behalf of the City of Detroit.

17 MR. IRWIN: Good morning, your Honor. Geoff Irwin,
18 Jones Day, City of Detroit.

19 MR. ELLENBERG: If the Court please, Mark Ellenberg,
20 Cadwalader, on behalf of Bank of America Merrill Lynch.

21 MR. HAWKINS: Good morning, your Honor. Howard
22 Hawkins from Cadwalader for Bank of America Merrill Lynch.

23 THE COURT: I'm sorry, sir. What's your last name?

24 MR. HAWKINS: Hawkins, your Honor. Thank you.

25 MR. CULLEN: Thomas Cullen, Jones Day, City of

1 Detroit.

2 MR. CLARK: Jared Clark, Bingham McCutchen, UBS AG.

3 MR. HACKNEY: Good morning, your Honor. Stephen
4 Hackney on behalf of Syncora Capital Assurance and Syncora
5 Guarantee.

6 MR. ARNAULT: Good morning, your Honor. Bill
7 Arnault from Kirkland & Ellis on behalf of Syncora.

8 THE COURT: What's your last name, sir?

9 MR. ARNAULT: Arnault.

10 MS. FISH: Good morning, your Honor. Deborah Fish
11 from the law firm of Allard & Fish on behalf of the ad hoc
12 COP's.

13 MR. MOERS MAYER: Good morning, your Honor. Thomas
14 Moers Mayer of Kramer, Levin, Naftalis & Frankel on behalf of
15 the ad hoc COP's.

16 MS. GREEN: Jennifer Green on behalf of the
17 Retirement Systems for the City of Detroit.

18 MR. MARRIOTT: Good morning, your Honor. Vince
19 Marriott, Ballard Spahr, on behalf of EEPK and affiliates,
20 and I'm here with my colleague, Matthew Summers, and our
21 local counsel, Howard Sher, of Jacob & Weingarten. Thank
22 you.

23 MR. GOLDBERG: Good morning, your Honor. Jerome
24 Goldberg on behalf of interested party David Sole.

25 MR. BENNETT: Good morning, your Honor. Ryan

1 Bennett on behalf of Syncora.

2 MR. PEREZ: Good morning, your Honor. Alfredo Perez
3 on behalf of FGIC.

4 MS. ENGLISH: Good morning, your Honor. Caroline
5 English from Arent Fox on behalf of Ambac Assurance
6 Corporation.

7 MR. LEMKE: Good morning, your Honor. I'm David
8 Lemke on behalf of U.S. Bank as trustee for the water and
9 sewer bonds.

10 MR. FRIMMER: Good morning, your Honor. Rick
11 Frimmer from Schiff Hardin on behalf of FMS Wertmanagement.

12 MR. PLECHA: Good morning, your Honor. Ryan Plecha
13 from Lippitt O'Keefe on behalf of the retiree association
14 parties.

15 MR. SMITH: Good morning, your Honor. Edwin Smith,
16 Bingham McCutchen, on behalf of UBS AG.

17 THE COURT: Anyone else? No? All right. Are we
18 ready to proceed then?

19 MR. SHUMAKER: Your Honor, Greg Shumaker again. If
20 I might just very quickly on the preliminaries so that your
21 Honor is -- has the latest, the -- over the last few days
22 we've been working with the other side and exchanging a lot
23 of information. The witness order, so that your Honor knows,
24 is going to be Gaurav Malhotra, Ken Buckfire, Jim Doak, and
25 Mr. Orr. The city has withdrawn Mr. Moore and submitted an

1 amended order for your Honor in connection with the post-
2 petition financing motion, so we've done that.

3 With regard to the joint statement of facts, I
4 wanted to share with your Honor that the parties have been
5 negotiating in good faith, have not been able to reach an
6 agreement with regard to the post-petition financing facts,
7 so I think we'll need to proceed, but that should be a more
8 limited set than with regard to the assumption motion.

9 With regard to the exhibits, your Honor, last night
10 we filed a consolidated joint exhibit list. It reflects the
11 exhibits to which there are no objections, and then there are
12 also obviously objections listed for certain documents. We
13 would propose that your Honor, if you would want to proceed
14 along the same lines as you did with the eligibility hearing,
15 that the exhibits to which there are no objections, that they
16 be admitted for all purposes for purposes of this hearing.

17 THE COURT: All right. The Court does order the
18 admission into evidence of the exhibits to which there is no
19 objection as listed in the exhibit list, Docket Entry Number
20 2185.

21 (City Exhibits 1, 2, 4, 5, 6, 7, 13, 18, 19, 30, 47-54,
22 56, 78, 79, 80, 88, 89, 93, 98, 100, 112, 113, 116-139;
23 Syncora Exhibits 201-214, 217, 223, 233-238, 240; FGIC
24 Exhibits 301, 303, 304, 307, 308, 309; Ambac Exhibits
25 401, 402, 403, 405, 406; EEPK Exhibits 801-805;

1 Retirement Systems Exhibits 1012-1015, 1019; Sole
2 Exhibits 1301, 1303, 1305, 1306, 1308, 1310, 1312, 1314,
3 1316; NPFG Exhibits 1, 2 received at 9:07 a.m.)

4 MR. SHUMAKER: Thank you, your Honor. Two final
5 things. Your Honor may wonder why an amended joint statement
6 of facts with regard to the assumption motion was filed late
7 last night. The only difference with that -- with the one
8 before was it has updated exhibit numbers for your Honor,
9 your Honor's convenience, and then I also wanted to mention
10 that we did file this morning the affidavit in connection
11 with the privilege log that you had asked for on Friday.

12 THE COURT: I saw that, and I did read the amended
13 statement. Before we proceed, if it's okay with you, I did
14 promise Ms. Fish an opportunity to make her party's position
15 on the record first so that she wouldn't have to stay. Is
16 that okay?

17 MR. SHUMAKER: Certainly.

18 MS. FISH: Thank you, your Honor. Deborah Fish.
19 Actually, Mr. Mayer is going to speak on --

20 THE COURT: Okay.

21 MS. FISH: -- behalf of the ad hoc COP's. He was
22 admitted in the Eastern District in 2005 in connection with
23 the Venture Holdings case.

24 THE COURT: Okay.

25 MS. FISH: Thank you, your Honor.

1 THE COURT: Sure. Go ahead, sir.

2 MR. MAYER: Thank you, your Honor. Again, Thomas
3 Moers Mayer of Kramer, Levin, Naftalis & Frankel for the ad
4 hoc COP's, otherwise known as Dexia Credit Local and Nord LB,
5 holders of approximately \$375 million principal amount of
6 COP's. I'm at the podium to announce a deal in connection
7 with our reservation of rights. A small context. We believe
8 that the contract administration agreement of 2006, which was
9 Exhibit 30 on the city's list -- I'm not sure where it is --

10 THE COURT: Can I ask you to pause for a moment and
11 turn that microphone so that the head faces more towards you?
12 You can bend that part right by the microphone.

13 MR. MAYER: Is this better, your Honor? Sorry.

14 THE COURT: Well, I don't want you to have to bend
15 over like that, so you can just --

16 MR. MAYER: Oh, I see.

17 THE COURT: -- lift up the microphone. There you
18 go.

19 MR. MAYER: There we go.

20 THE COURT: Okay.

21 MR. MAYER: Thank you. The record contains what
22 used to be City Exhibit 30, contract administration
23 agreement, which contains a provision, Section 9.1. We
24 believe that if your Honor approves the forbearance agreement
25 and it consummates and the swap counterparties get money,

1 they need to turn it over. They believe they do not need to
2 turn it over. This is a dispute that does not require
3 resolution in order for the forbearance agreement to be
4 approved, and the Court does not need to decide this issue
5 or, in our view, anything related to it, and we and the swaps
6 and the city all agree that it does not need to be resolved
7 in connection with this dispute. We just did not want to be
8 prejudiced by the order that was submitted, and, therefore,
9 we have negotiated the insertion of a new decretal paragraph,
10 which I would propose to read into the record if that's okay.
11 It will not take long.

12 THE COURT: Sure. Go ahead.

13 MR. MAYER: This order does not affect any claims or
14 defenses of any nondebtor party against any other nondebtor
15 party arising under or in connection with Section 9.1 of the
16 contract administration agreement dated June 12th, 2006, as
17 amended, among the Detroit Retirement Systems Funding Trust
18 2006, the service corporations, paren, as defined in the
19 forbearance agreement, close paren, and the other parties
20 thereto, period, end of proposed decretal paragraph. If this
21 decretal paragraph is inserted into the order and the order
22 contains no provisions materially inconsistent with that
23 paragraph -- and I understand there is no intention to do
24 that -- Dexia and Nord withdraw their objections to the
25 forbearance agreement. And with that, your Honor, if I may

1 ask if I may be excused. Ms. Fish will, I think, continue to
2 monitor the proceedings for our clients.

3 THE COURT: Yes, sir.

4 MR. MAYER: Thank you very much.

5 MR. HACKNEY: Your Honor, just a brief preliminary
6 statement if I could before I turn it over to the debtors.
7 On Friday the Court made a number of clarifying comments that
8 I think were helpful to the presentation of the trial today,
9 and we went back from Friday and processed what the Court's
10 result -- comments meant for exhibit lists, presentations of
11 cross-examination, having witnesses not fly here to the City
12 of Detroit because they wouldn't be testifying, but I did
13 want to confirm for the record what I think is an obvious
14 point, but that is that the Court's comments weren't mere
15 suggestions, that the Court's comments were in the way of
16 evidentiary rulings that the Court expects us to abide by
17 under Rule 103 and that the -- you know, the substance of the
18 excluded evidence is apparent from the Court's comments. I
19 think if we could get confirmation of that, it will
20 streamline today's hearing.

21 THE COURT: Yes.

22 MR. HACKNEY: Thank you.

23 MS. ENGLISH: Good morning, your Honor. Caroline
24 English from Arent Fox representing Ambac. I just have one
25 issue I'd like to raise before the debtor starts their case

1 in chief, and it's --

2 THE COURT: Sure. Go ahead.

3 MS. ENGLISH: -- with respect to the admissibility
4 of the exhibits. We just have one exhibit that the city has
5 objected to, which, frankly, we think it may be a mistake.
6 It is the offering circular for the COP's from 2006, which is
7 signed by a city official, so, therefore, it's a party
8 admission.

9 THE COURT: What number are you referring to?

10 MS. ENGLISH: Yes. I'm sorry. It is Ambac Exhibit
11 Number 404.

12 THE COURT: Does the city object to 404?

13 MR. SHUMAKER: It does, your Honor.

14 THE COURT: Apparently it's not a mistake.

15 MS. ENGLISH: I'd like to argue for its admission as
16 opposed to having to --

17 THE COURT: Oh, let me hear what the objection is
18 before --

19 MS. ENGLISH: Certainly, your Honor.

20 THE COURT: -- I hear that. That will streamline
21 matters.

22 MR. SHUMAKER: The objection, your Honor, is hearsay
23 and authentication. The document purports to be a document
24 from the 2005 or 2006 time frame. There's been no sponsoring
25 witness. There's been no effort to authenticate it. It is

1 hearsay. It is being offered for the truth of the matter
2 asserted, and that's why we raised our objection.

3 MS. ENGLISH: Your Honor, the document is the
4 offering circular that was issued with the 2006 COP's. It is
5 signed by Roger Short, who was the city's interim finance
6 director. It is, therefore, a party admission under Federal
7 Rule 801, and it should come in and be admissible. It is a
8 document --

9 THE COURT: Let's break these down. Is it self-
10 authenticating under the Federal Rules of Evidence?

11 MS. ENGLISH: Yes. We believe it is, your Honor.

12 THE COURT: What rule are you relying on there?

13 MS. ENGLISH: I'm afraid I don't have that.

14 THE COURT: Well, I'll tell you what. Let me ask
15 you to look into that issue. The second issue is you say
16 it's signed by this individual. What you mean, of course, is
17 that it is purportedly signed by that individual, but I guess
18 the city is putting you to the test on whether there's really
19 evidence that he signed that, so you need --

20 MS. ENGLISH: I think we're going to have a real
21 problem, your Honor, if the city is denying the authenticity
22 and validity of the statements made in its offering circular
23 under the securities laws.

24 THE COURT: Well, I don't hear that at all. What I
25 hear is that the document that you have identified as Exhibit

1 404 --

2 MS. ENGLISH: 404, your Honor.

3 THE COURT: -- there's no evidence of its
4 authenticity, and in the absence of that, it's not
5 admissible.

6 MS. ENGLISH: I understand, your Honor.

7 THE COURT: So you can revisit this issue when it
8 comes time to present the objectors' case later.

9 MS. ENGLISH: Yes. Thank you, your Honor.

10 THE COURT: All right. Let's proceed. Ms. Ball.

11 MS. BALL: Thank you, your Honor. Corinne Ball of
12 Jones Day on behalf of the city. Good morning. Your Honor,
13 we're here on two motions. We seek to advance the
14 operational objectives of the city, motion to approve
15 assumption of the forbearance agreement, and the motion to
16 authorize the liens for the post-petition financing and make
17 the related findings.

18 The motion to approve the assumption -- the
19 forbearance agreement and the swap settlement was filed on
20 July 24th. Objections were filed on August 16th, and our
21 reply, your Honor, was filed on December 12th. The motion to
22 approve the granting of liens for post-petition financing and
23 make the related findings was filed on November 5th.
24 Objections were due on November 27th, and our reply was filed
25 on December 10th. As we stand here this morning and after

1 the statements of Mr. Mayer, your Honor, there remain 11
2 objections to the assumption and settlement motion by our
3 count and 11 to the post-petition financing. But for two
4 casinos and AFSCME, the eight some other objections to the
5 post-petition financing are also objectors to the assumption
6 motion. We're here on both motions in part due to the
7 objectors' concerns that a 9019 motion allowing the swap
8 banks a secured claim should be tied to the city's ability to
9 realize the swap unwind discount. Importantly, the
10 forbearance agreement is also contractually tied to the post-
11 petition financing. You may recall last Friday, your Honor,
12 we reviewed that, in fact, termination of the liens on the
13 casino revenues pursuant to the forbearance agreement is
14 conditioned to the post-petition financing and not
15 surprisingly because both share a lien on the casino
16 revenues.

17 The developments to date, your Honor, the retirees
18 committee is supporting both motions. We're advised that
19 National and Assured are withdrawing their objections to both
20 motions. The language changes in the order that Mr. Shumaker
21 referred to that was filed last night were due to resolving
22 the objections of Assured and National. You heard this
23 morning we will be filing an additional amendment to the
24 order to reflect the language that Mr. Mayer read into the
25 record.

1 Finally, due to the constraints imposed by the
2 mediation process, the agreement by the swap banks to extend
3 the 75-percent option price through year-end, although it has
4 not yet been executed, the swap banks are prepared to
5 represent their agreement to that extension in today's
6 hearing, your Honor, and that they will execute what will
7 become the sixth amendment and what we would hope be
8 available later today.

9 As you heard during eligibility and will hear on a
10 more focused basis in these hearings, these motions address
11 stabilizing the city's working capital, anticipating cash
12 needs, anticipating the impact on the city's core working
13 capital. In fact, your Honor, with the advice of Messrs.
14 Buckfire and Malhotra, which will be evidence before you, the
15 emergency manager has seen, as he reported in his -- in the
16 eligibility trial, 50 million in cash on hand as a floor
17 beneath which the city should not fall. Sometimes I think
18 the aviators call that a hard deck. In this hearing, your
19 Honor, Mr. Malhotra will testify to the cash flow numbers,
20 both actual and forecast, to various scenarios with and
21 without the swap settlement, with and without the post-
22 petition financing. He'll also testify to the impact of the
23 swap settlement on the city's cash flows, the 50 million hard
24 deck, and the savings to be achieved through the relief
25 sought in both motions before you today. Mr. Buckfire will

1 testify about the crisis that'll be caused if the casino
2 revenues are trapped for a substantial period. Moreover, Mr.
3 Buckfire will testify that given the termination value of the
4 swap and the expense of the swap compared to the consent
5 value, there's clear need to unencumber the casino revenues
6 in order to provide for the financial future of the City of
7 Detroit.

8 In addition, the need to remove or neutralize a
9 continuing threat to the assured access of the city to casino
10 revenues, which is represented by a costly swap agreement
11 that is in default and has the benefit of a collateral
12 agreement, lock box arrangements, and the bankruptcy safe
13 harbors, which essentially make swap bank remedies and
14 trapping self-executing. Mr. Buckfire will also review the
15 course of the negotiations with the swap banks. Mr. Buckfire
16 will testify as to the inability of the city to borrow monies
17 on an unsecured basis and that the casino tax revenues and
18 income tax revenues are the strongest revenue streams
19 available to the city to provide for its financial future.

20 Moving on to Mr. Orr, Mr. Orr will testify as to the
21 litigation options considered by the city and the potential
22 impact of interrupting the city's access to casino revenues,
23 the process of weighing the uncertainty and risk in view of
24 the consequences of trapping the casino revenues for any
25 length of time, and the need to be assured of adequate

1 working capital for the city. Mr. Orr has a responsibility
2 of moving forward. As emergency manager, he has no interest
3 in justifying past transactions. He has to assess options
4 and pursue the most stable reasonably reliable path forward
5 in the sound exercise of reasonable business judgment.

6 The assumption represents a question of reasonable
7 exercise of business judgment, and as will be presented in
8 this hearing and in that connection, the validity and
9 enforceability of the forbearance agreement is before the
10 Court in this hearing.

11 Through the testimony of Messrs. Malhotra, Buckfire,
12 Doak, and Orr and the documentary evidence, most of which has
13 already been admitted into evidence this morning, the city
14 believes it will demonstrate the benefits from approving the
15 forbearance and swap settlement and the financing will be
16 made clear as will the benefit from avoiding a potentially
17 broad-ranging litigation that would be lengthy, complex,
18 uncertain, threatening, and certainly expensive.

19 Your Honor, the evidence will establish that the
20 forbearance is an executory contract. It is a separate
21 agreement which the city is assuming cum onere. It is a
22 valid and enforceable contract, and on that point, your
23 Honor, I would note that we are in violent agreement with
24 Syncora that the Court has to find that the contract is valid
25 and enforceable to reach assumption. Moreover, your Honor,

1 it's not an inside --

2 THE COURT: One second, please.

3 MR. GOLDBERG: My apologies. I'm turning this off.

4 I thought it was off already.

5 THE COURT: I'm going to ask you to actually turn it
6 over to our court security officer at this point, please.

7 MR. GOLDBERG: I apologize, your Honor.

8 THE COURT: Everyone else's electronic devices off
9 or in vibrate mode, please. You can retrieve it at the
10 break, sir.

11 MR. GOLDBERG: I apologize.

12 MS. BALL: Your Honor, although the forbearance
13 agreement represents an agreement between the city, the
14 service corps, and the banks, they're just not insider deals.
15 Mr. Buckfire will testify it was heavily negotiated with swap
16 banks. Your Honor, the 9019 presents a settlement which
17 falls within the range of reasonableness, and it essentially
18 does allow a secured claim in exchange for forbearance.

19 Turning, your Honor, to the critical assessment that
20 we discussed somewhat on Friday, the 9019 and your Honor's
21 assessment of whether the settlement is fair and equitable,
22 we will turn to the Bard factors, the four factors that your
23 Honor has asked us to reflect upon. I would point out just
24 as a preliminary, your Honor, you should take -- you might
25 want to take note that the lineup of the objectors suggests

1 that there are real differences in view as to the probability
2 of success on any litigation challenging the swaps, their
3 collateral, or the COP's. We have contract-based objectors.
4 As defenders, it's not dependent upon the validity of the
5 swaps, the COP's, and the lien on the casino revenues as to
6 which they assert consent rights. The remainder of the
7 objectors led by Ambac argue that the prospects and impact of
8 litigating validity place the swap settlement outside even
9 the lowest range of reasonableness, clear divergence of
10 views, your Honor. Representatives of the retirees and
11 pension systems echo that validity challenge objection,
12 surprising because the 1.4 billion raised in the COP's
13 transaction went to fund the pension systems. Every annual
14 statement they produced reflect that funding. When it comes
15 to the central debate and whether swap banks should be
16 treated secured by special revenues, the litigation issues
17 you'll hear about will revolve around special revenues. Are
18 the casino wagering tax revenues special revenues within
19 Section 901 giving the swap banks a post-petition lien under
20 Section 928 and an exemption from the Chapter 9 stay by
21 virtue of Section 922(d)? You'll hear about Act 34, which
22 focuses on events in 2006. Was entry of the swap valid? As
23 Act 34 applies to the city, are the service corps the alter
24 ego of the city, and should they otherwise be disregarded and
25 the city deemed to be the swap counterparty, thus making the

1 swap invalid? You'll hear about Section 12 of the Michigan
2 Gaming and Control Act. Was the pledge of casino revenues to
3 secure antecedent debt with the authorization of that
4 section? And if it wasn't, was it void or voidable, or was
5 it preempted by the -- was any challenge preempted by the
6 bankruptcy safe harbors?

7 When it turns to the second factors, your Honor
8 instructed us on Friday the focus is the juxtaposition of the
9 quality of the secured creditors' claim, the swap banks as
10 secured against, your Honor, the preserving and protecting
11 the city's cash flow. There is no doubt that the swap banks
12 are swap participants. Absent a court decree to the
13 contrary, they are swap participants that have excise taxes
14 as collateral, which is a type of tax specifically referred
15 to in 901's definition of special revenues. And as your
16 Honor may recall from our debate in August, swap participants
17 enjoy special protections which exempt them from the
18 automatic stay and the stay of Section -- of 922(a) and,
19 moreover, according to some courts, broadly permit swap
20 participants to exercise remedies. That would be 362(b)(17)
21 and 922(d).

22 In addition, the Bankruptcy Code ties this Court's
23 hands in preventing the Court from issuing orders or
24 providing further -- and providing further that nothing in
25 Title 11 is to interfere with the swap parties terminating,

1 liquidating, et cetera.

2 You'll hear from the swap banks that they have five
3 key factors. They can terminate, as we just discussed. They
4 believe they can exercise remedies. They have a statutory
5 lien on casino revenues, which are special revenues. They
6 have control over cash collateral through lock box accounts,
7 and, your Honor, they would argue that the safe harbors
8 prevent a challenge. Thanks to Syncora, we know they have a
9 demonstrated ability to trap the casino revenues. Your Honor
10 would say -- you've heard the phrase that the operation was a
11 success but that the patient died from the complications. We
12 think that analogy is apt and captures the city's concerns on
13 the second Bard factor, as Messrs. Buckfire, Malhotra will
14 establish and Mr. Orr will confirm, that cash is a critical
15 lifeline for the city, and that, of course, gets us the third
16 Bard factor, and I don't think there's any doubt, your Honor,
17 that the potential challenges described by Ambac present
18 complicated and unique questions involving municipal finance
19 law in the State of Michigan tied to swap contracts which
20 enjoy ever expanding protection from the impact of bankruptcy
21 as underscored by two Circuit Court decisions in the recent
22 past.

23 Finally, your Honor, turning to the interest of
24 creditors, one thing that we would ask that you bear in mind
25 and we view as very critical in the fourth factor, there was

1 no middle ground. Litigate or settle with a view to
2 protecting and preserving the city's cash. Enron and its
3 Lehman progeny demand that the swap banks act or that they
4 risk forfeiting their bankruptcy protection. Your Honor, it
5 is only the forbearance agreement and their post-petition
6 performance under it that has prevented the swap banks from
7 initiating their remedy sequence and calling those bankruptcy
8 protections into play.

9 As to the post-petition financing, your Honor,
10 Messrs. Doak and Buckfire will provide evidence that the
11 unsecured -- that unsecured credit is not available to the
12 city. I'm sure that comes as no surprise. Mr. Doak will
13 also testify that following a robust process, the post-
14 petition financing represents the best feasible financing
15 available -- realistically available to the city in its
16 current condition when the city is only able to offer limited
17 collateral and the city has to additionally insist on
18 remedies which preserve the city's ability to operate even in
19 the face of default. Your Honor, that was a tall order.

20 Mr. Doak will also testify as to the negotiations
21 with potential lenders and Barclays providing the evidence,
22 your Honor, for the findings on good faith. Mr. Doak as well
23 as Mr. Orr will testify as to the steps taken with the state
24 treasurer, the individual members of the City Council, and
25 the Emergency Loan Board in respect to the financing and

1 related items.

2 Your Honor, I will yield to the evidence as we move
3 to witnesses, but I would like to reserve to answer the
4 contract issues, also called the consent issues, and to
5 answer the Court's questions and objectors' argument.

6 THE COURT: Well, I don't have a question, but I do
7 have a concern that I want to bring to your attention so that
8 you can focus your evidence. I want to understand, as best
9 you can help me to understand it, what the considerations
10 were that led to the agreement to buy out the swaps at 75
11 percent as opposed to some other percentage.

12 MS. BALL: Understood, your Honor. We will do that.
13 Thank you, your Honor.

14 THE COURT: Anyone on the objecting side want to
15 give an opening statement, or shall we go directly to proofs?
16 All right.

17 MR. STEWART: Good morning, your Honor. Geoffrey
18 Stewart, Jones Day. Our first witness is going to be Gaurav
19 Malhotra. Before we start, though, I intend, as best I can,
20 to qualify Mr. Malhotra as an expert so we don't have the
21 issues that we had in our last hearing. I spoke before court
22 today with Mr. Hackney, who may well have objections to that,
23 so we have a procedural question, and maybe instead of
24 speaking for you -- I believe it has to do -- Mr. Hackney may
25 well want to voir dire the witness on his expert credentials,

1 which we could do in the middle of his direct, or we could
2 wait for Mr. Hackney's cross, as your Honor would prefer.

3 THE COURT: No. I think it's in the best interest
4 of all concerned to have a determination regarding his
5 expertise before we hear his proffered expert opinion.

6 MR. STEWART: Good. Okay. Then, your Honor -- so
7 why don't we call the witness, and I'll get --

8 THE COURT: Yes. Step forward, please, sir.

9 MR. STEWART: We'll get that part of it done.

10 THE COURT: Before you sit down, please raise your
11 right hand.

12 GAURAV MALHOTRA, DEBTOR'S WITNESS, SWORN

13 THE COURT: All right. Please sit down over there.
14 Proceed, sir.

15 DIRECT EXAMINATION

16 BY MR. STEWART:

17 Q Good morning, Mr. Malhotra.

18 A Good morning.

19 Q Would you please, for the record, state your -- give us
20 your name and where you live?

21 A Gaurav Malhotra, and I live in Chicago, Illinois.

22 Q And describe for us, if you could, your education.

23 A I graduated from undergrad in India from University of
24 Delhi and finished my MBA from Case Western Reserve
25 University in 2001 with majors in finance and business

1 policy.

2 Q After your graduation from Case Western Reserve, where
3 did you go to work?

4 A Ernst & Young.

5 Q And is that where you still work today?

6 A That is correct.

7 Q In the interim, you've been with other groups or other
8 employers?

9 A Yes. With other restructuring practices, yes.

10 Q You just used the word "restructuring." For the record,
11 tell us what you meant when you used the word
12 "restructuring."

13 A It involves assessing and developing a business plan for
14 a client for both the short term and the long term.

15 Q And is that development of a business plan sometimes
16 called financial analysis?

17 A Yes.

18 Q Would you call yourself somebody who works in the field
19 of financial analysis?

20 A Yes.

21 Q Now, you've been working for the City of Detroit?

22 A Yes.

23 Q And for how long?

24 A For about two and a half years.

25 Q And tell us just generally speaking what sort of work

1 you've done for the city in those two and a half years?

2 A Our work has involved -- my work has involved extensive
3 forecasting of cash, the development of short-term and long-
4 term financial projections for the last two-plus years.

5 Q Have you also done work for other municipalities?

6 A Yes, I have.

7 Q What are the other municipalities that you can tell us
8 about?

9 A The one that's publicly disclosed is Detroit Public
10 Schools in which we did extensive cash flow forecasting as
11 well as we have two other situations in which I'm involved in
12 right now that are municipalities.

13 Q Okay. And you cannot -- you're not free to give us the
14 names of your clients in those two other instances?

15 A No. Those are confidential.

16 Q Okay. In addition to representing municipalities or
17 working for municipalities, what work have you done as a
18 financial analyst for private sector clients?

19 A I've represented both public and private companies that
20 have been distressed in terms of evaluating and creation of
21 long-term business plans.

22 Q What are the names of some of those companies?

23 A Some of the publicly disclosed ones are Delta Airlines,
24 Eagle-Picher, Liberty Medical, going on right now, some of
25 the publicly disclosed ones.

1 Q Now, have you been engaged by my law firm, Jones Day, to
2 testify as an expert witness in this hearing?

3 A Yes.

4 Q And to testify about what?

5 A To testify about financial analyses related to the City
6 of Detroit.

7 Q Let me ask you then about your background a little bit.
8 How many years have you worked as a financial analyst?

9 A Since I graduated from grad school, 13-plus -- almost 13
10 years.

11 Q Are you a member of any professional associations that
12 focus upon financial analysis?

13 A Yes. I'm a chartered financial analyst, a CFA.

14 Q And is that a qualification for which you have to take a
15 test and be approved by some board?

16 A Yes. You have to take tests for three years and be
17 approved.

18 Q What about other professional organizations?

19 THE COURT: Excuse me one second. You have to take
20 tests what, sir?

21 THE WITNESS: And get approved.

22 THE COURT: And get approved. All right.

23 THE WITNESS: Yes.

24 BY MR. STEWART:

25 Q And other associations as well?

1 A Yes. I'm a member of the Association of Insolvency and
2 Restructuring Advisors as well as the Turnaround Management
3 Association and have completed my tests for the certification
4 of insolvency and restructuring advisors.

5 Q And who gives that certification?

6 A It's the Association of Insolvency and Restructuring
7 Advisors.

8 Q Okay. And that's pending?

9 A That's correct.

10 Q And what remains to be done before that is finished?

11 A I have to send in my paperwork.

12 Q Okay. Tell us, if you could, what knowledge and skills
13 you need in order to do the work of financial analysis.

14 A You have to be able to assess and evaluate data from
15 multiple sources from a historical perspective in terms of
16 how they come together, how the data cross-checks with each
17 other, and what within that data would be considered as one-
18 time items versus long-term trends, and the evaluation of how
19 that historical performance impacts future performance from a
20 forecast standpoint.

21 Q And you're able to do that work because of specialized
22 knowledge that you have?

23 A Yes.

24 Q What is the specialized knowledge?

25 A It's my years of experience doing this, my financial

1 education, as well as my business experience in terms of
2 dealing with multiple situations like this.

3 Q Okay. Now, in the course of your work for the city, who
4 from the city have you worked with?

5 A We've worked with the emergency manager. We've worked
6 with the former CFO, the mayor, the chief of staff, the chief
7 operating officer, department heads, so --

8 Q Have you worked with the finance director?

9 A Yes.

10 Q And the treasurer?

11 A Yes.

12 Q Sorry. Anyone else?

13 A Various department heads at the city and the CFO and the
14 COO.

15 Q And what books and records of the city have you had
16 access to and have you relied upon?

17 A We have relied upon bank statements, the comprehensive
18 annual financial report, the internal operating reports
19 presented by the city.

20 Q Let me stop you there. What would be a good example of
21 such an internal operating report?

22 A It would be a report that would summarize some of the
23 revenues and expenses from an interim standpoint as well as
24 some cash posting activity that is available on an
25 internal -- from an internal standpoint.

1 Q And what's -- how many internal reports have you looked
2 at if you can count them?

3 A I would say it's dozens in terms of the number of
4 reports.

5 Q Have you also looked at the city's budgets?

6 A Yes.

7 Q What's the relevance of the budgets to your work?

8 A Because the budget provides some sort of a framework for
9 providing the projections going forward, and we are able to
10 evaluate the budget in terms of how it compares to the
11 historical performance and the actual performance activity
12 that we have seen over the last two-plus years.

13 Q Now, you use the term "we." Are you referring to a group
14 above and beyond yourself?

15 A Yes. I have multiple members of my team that are
16 assisting me on this engagement.

17 Q And how large is the team that reports to you on this
18 engagement?

19 A It's between ten and fifteen people at any given point in
20 time.

21 Q Let me ask you this. Is there a standard and accepted
22 methodology that financial analysts follow in performing
23 their work?

24 A Yes.

25 Q Tell us, if you could, what is that standard and accepted

1 methodology?

2 A It is the -- it is to study and evaluate the historical
3 performance in detail, to understand what one-time items are
4 impacting the historical performance, what are trends, and
5 are there any other one-time events that are impacting the
6 performance, and then also the process of discussing those
7 trends and observations with the management team, getting
8 their input, and then collectively the combination of using
9 the historical data, the combination of discussions with the
10 management team, coming up with forecasts that are reasonable
11 based on the overall assumptions.

12 Q And what do you do to test assumptions?

13 A To test the assumptions, we study as to how those
14 assumptions have played out from a historical standpoint,
15 what the basis of those assumptions are in our view along
16 with the view of the management team. We also study if there
17 are any anomalies in terms of the assumptions compared to
18 what the historical performance has been.

19 Q Now, do you use computer software to help you conduct
20 this analysis?

21 A Yes.

22 Q What is the computer software?

23 A We use Excel.

24 Q Is that a standard computer application that people use
25 in the field of financial analysis?

1 A Yes.

2 Q Now, as a result of your work, have you prepared cash
3 flow forecasts for the City of Detroit?

4 A Yes, we have.

5 Q And walk us through the steps you followed to prepare
6 these cash flow forecasts.

7 A We have gone -- we have and I have evaluated bank
8 statements of the city, internal operating reports of the
9 city, the analysis of the CAFR, also discussions with the
10 management team to highlight what the receipts and
11 disbursements activity has been within certain
12 classifications on a historical standpoint in terms of our
13 analysis of the bank statements. Based on that summary, in
14 conjunction with the budgets and discussions with the
15 management team, we have gone ahead and extrapolated
16 assumptions with respect to what the data would be, for
17 instance, for payroll, for revenues to come up with what we
18 think is a reasonable cash flow forecast for the city.

19 Q How long, by the way, has it taken you and your team --
20 pardon me -- to prepare these cash flow forecasts?

21 A Several months.

22 MR. STEWART: Your Honor, I would move to qualify
23 Mr. Malhotra as an expert witness in the field of financial
24 analysis for the purpose of testifying about the cash flow
25 forecast he has prepared relating to the finances of the City

1 of Detroit.

2 MR. ARNAULT: Good morning, your Honor. Bill
3 Arnault on behalf of Syncora. Just a few questions for the
4 witness.

5 VOIR DIRE EXAMINATION

6 BY MR. ARNAULT:

7 Q Good morning, Mr. Malhotra. How are you?

8 A Good morning. Fine. Thank you.

9 Q Good to see you again. Just a few questions about your
10 general background and qualifications. You've never been
11 qualified as an expert witness before; correct?

12 A That is correct.

13 Q And before this case, you've never worked on a Chapter 9
14 case; is that right?

15 A That is correct.

16 Q But you have done work in the public sector, it sounds
17 like; right?

18 A Yes, I have.

19 Q But those are the two instances that you're not willing
20 to disclose because of confidentiality reasons; correct?

21 A Two plus the Detroit Public Schools.

22 Q Okay.

23 A That's correct.

24 Q I'm assuming, however, without knowing what those are,
25 that the cash forecasts and the work that you've done for the

1 other two municipalities wasn't on the size or scale of the
2 City of Detroit; is that correct?

3 A I think Detroit Public Schools, in terms of their general
4 fund budget, was similar to the size of the general fund for
5 the City of Detroit in terms of its magnitude.

6 Q Really? So the general fund for the Detroit Public
7 Schools is as large as the general fund for the City of
8 Detroit?

9 A I think it's close enough. I would have to go back and
10 look at the exact number, but I think it's reasonably close.

11 Q Okay. And all the same assumptions that would go into
12 building the forecast for the City of Detroit, would those
13 also go into the Detroit Public Schools?

14 A Generally, yes, because they also have -- Detroit Public
15 Schools has significant tax revenues that come in as well as
16 has a significant amount of its fixed obligations in the
17 amount of payroll and other operating expenses, so the
18 overall revenue landscape I would say is similar; however, it
19 gets impacted, of course, by student count. So in terms of
20 magnitude, I think the general fund impact is roughly
21 similar.

22 Q And the magnitude of the expenses is the same in the
23 Detroit Public Schools as it is for the City of Detroit?

24 A For the general fund, my recollection is yes, but I can
25 go back and look at the details, but my recollection is that

1 the general fund impact is roughly the same.

2 Q And correct me if I'm wrong. My understanding would be
3 that the Detroit Public Schools is just one entity, whereas
4 the City of Detroit has a number of various departments;
5 correct?

6 A Detroit Public Schools has various departments. It's not
7 just one department. It has various departments that roll
8 into the financial profile of Detroit Public Schools.

9 Q But not as many departments as the City of Detroit;
10 correct?

11 A I'm not sure as to exactly how many departments the
12 Detroit Public School has right now.

13 Q And you're not a CPA; is that right?

14 A That is correct.

15 Q And you're not an economist, are you?

16 A I'm not.

17 Q Okay. Nor are you an actuary; correct?

18 A That is correct.

19 Q Okay.

20 MR. ARNAULT: Your Honor, we would object to the
21 city's offer of Mr. Malhotra as an expert based on the
22 grounds that he lacks the qualifications and the technical
23 experience to create the cash flow forecast that he will be
24 offering.

25 MR. MARRIOTT: Your Honor, Vince Marriott, Ballard

1 Spahr, on behalf of EEPK and also the other objectors. In
2 addition to the qualification issue, Judge, I'd like to make
3 a relevance objection to what sounds to be the opinion
4 testimony that Mr. Malhotra will be giving. Given the
5 limitations on the scope of this Court's inquiry --

6 THE COURT: Well, let me ask you to hold on your
7 relevance objection, to the extent it relates to the opinion
8 that will be given, until it is proffered.

9 MR. MARRIOTT: Very well, your Honor. Thank you.

10 MR. STEWART: Your Honor, in response to Mr.
11 Arnault's point, I don't think it's necessary that
12 Mr. Malhotra be an economist or a CPA. He said he's a
13 certified financial analyst, and he's described at length his
14 credentials. I think he satisfies the requirements of Rule
15 702, which are fourfold, and I hope that I covered them in
16 that order. First, that the expert's specialized knowledge,
17 it speaks of scientific, technical or other specialized
18 knowledge without getting into whether it's scientific or
19 even technical. I believe that it's clear it's specialized,
20 and it's specialized because of its complexity, because of
21 the need to take different data sources into account, and to
22 follow the processes and methods that he described. And
23 the -- this part of the rule says it would help the trier of
24 fact to understand the evidence or to determine a fact that
25 is in issue. And understanding Mr. Marriott's objection as

1 to relevance, which we'll deal with shortly, I believe the
2 cash flow forecasts we intend to speak about are relevant
3 because they would show the effect upon the city's finances
4 if it were the case that the casino revenues that Ms. Ball
5 mentioned earlier were not available to the city.

6 THE COURT: All right. On the qualifications issue,
7 the Court will find that the witness is qualified by his
8 experience and training to proffer to the Court an expert
9 opinion on his cash flow analyses of the City of Detroit, and
10 the objection is overruled. You may proceed.

11 MR. STEWART: Thank you, your Honor.

12 DIRECT EXAMINATION (CONTINUING)

13 BY MR. STEWART:

14 Q So the first exhibit will be Exhibit -- City Exhibit 36.
15 So, Mr. Malhotra, let me ask you about some of your cash flow
16 work that you've done. On the screen before you is Exhibit
17 36. Are you able to see it on the monitor there at the
18 witness stand?

19 A Yes, I am.

20 Q Okay. Did you prepare cash flow -- and by the way, what
21 is this document?

22 A This was the proposal for creditors that was presented on
23 June 14, 2013, by the emergency manager.

24 Q Okay. And if you could speak more slowly because the
25 court reporter has to take all of this down, and the faster

1 you talk, the harder her job gets.

2 A Sure.

3 Q And you don't want her --

4 THE COURT: Thank you for that caution. And, Mr.
5 Marriott, I don't want you to feel the need to rush the
6 lectern when you want to object, so just pull one of those
7 microphones closer to you, and I'll ask you to make your
8 objection at the time you think it's appropriate from the
9 lectern -- from the table there.

10 MR. MARRIOTT: Thank you, your Honor.

11 THE COURT: Okay.

12 BY MR. STEWART:

13 Q And, Mr. Malhotra, were you at the June 14, 2013,
14 meeting?

15 A Yes, I was.

16 Q And what use was made of that document that day?

17 A It was used to show the city's financial position and its
18 projections over the next ten years and what cash was
19 available for unsecured creditors.

20 Q Did you prepare any cash flow forecasts that are
21 contained within Exhibit 36?

22 A Yes, I did.

23 Q Could you please direct us to those within the exhibit?

24 A Yes. They would be, I believe, on pages 57 and 58.

25 Q Okay. Can you scroll to those, please? Let's go to

1 page -- you see there's competing page numbering of this
2 exhibit, Mr. Malhotra. Were you referring to the page that
3 we have before us that appears to be page 49?

4 A Yes.

5 Q And you prepared this?

6 A Yes.

7 Q What is it?

8 A It is a summary of the actual cash flows for the city's
9 general fund for -- from July 2012 to May 2013 and a one-
10 month forecast for the month of June 2013 to give a snapshot
11 of fiscal year '13's cash flow activity compared to fiscal
12 year 2012's cash flow activity.

13 Q And what does the next page show?

14 A Next page shows the forecasted cash flows for fiscal year
15 2014 on a monthly basis.

16 Q Did you prepare these cash flow forecasts in the manner
17 you described to us a few minutes ago when I asked you about
18 how you went about your work as a financial analyst?

19 A Yes.

20 Q Are there other forecasts that you prepared also in
21 Exhibit 36?

22 A Yes.

23 Q Where are those?

24 A Those should be on pages 97, 98, which broke down the
25 ten-year projections for the city from 2014 to 2023.

1 Q Okay. All right. Thank you.

2 MR. STEWART: Your Honor, I would move the admission
3 of Exhibit 36, although I think it may actually have been
4 stipulated in as Sole Exhibit 1360.

5 MR. MARRIOTT: Objection, your Honor. I'm not sure
6 it was stipulated in, and I think relevance objections and
7 potentially hearsay objections were asserted to it. Let me
8 explain to you my issue, Judge, and the purposes for which
9 it's being introduced may impact whether the -- how much I
10 object.

11 THE COURT: I'm sorry, sir. I do have to ask you to
12 stand while you make your objection and use the microphone as
13 best you can.

14 MR. MARRIOTT: It might be easier to come to the
15 podium then because --

16 THE COURT: If that's your preference, that's fine
17 with me.

18 MR. MARRIOTT: -- the mike then isn't so far from
19 the -- people complain about not being able to hear me
20 without a mike, so -- Judge, given the limitation on the
21 scope of this Court's inquiry with respect to approval of the
22 post-petition financing and the forbearance agreement, it's
23 our contention that Mr. Malhotra can relevantly testify as to
24 the amount that will be payable under the forbearance
25 agreement if the Court approves it and may testify as to the

1 city's cash savings if the transactions are approved and
2 funded as distinguished from disapproved. It is our
3 contention that he may not testify and we object to any
4 testimony as to the need or uses of the additional cash flow
5 generated by the proposed transaction nor can he testify as
6 to the city's projected cash balances going forward because
7 imbedded in any such projections are assumptions as to the
8 needs and uses of the city. We similarly object to any
9 exhibit to the extent it is purported to be introduced for
10 purposes other than those to which we believe Mr. Malhotra
11 can testify; i.e., amount of the payment and cash savings
12 resultant from the transaction; in other words, it's going to
13 cost the city 50 million a year if we don't do this deal, and
14 it will only cost the city \$20 million a year if we do. He
15 can testify as to that. He can testify as to what it's going
16 to cost under the forbearance agreement if it's approved.
17 But if he gets into net cash balance testimony, if he gets --
18 if we start introducing projections, those projections are
19 built up from needs and uses assumptions, which we have taken
20 out of this hearing as relevant and as to which, if they were
21 relevant, we would have produced witnesses that would have
22 contested some of the assumptions underlying needs and uses
23 and the like in those projections, so we don't object to
24 Mr. Malhotra testifying as to cost of the forbearance
25 agreement and the savings resulting from it, nor do we object

1 to exhibits insofar as they are introduced solely for the
2 purpose of reflecting those two numbers, but for any other
3 purposes and as to any other testimony, we object.

4 MR. STEWART: Your Honor, a few responses. First of
5 all, I think the forecasts are relevant and material to the
6 decision of the emergency manager to enter into this
7 agreement and the reasons why the city submits that the
8 forbearance agreement should be approved. As to the fact
9 that the forecast bundle and assumptions about spending and
10 other things have been given to the witness by others, we
11 don't intend to one way or the other speak about them other
12 than the fact that they are numbers that are part of the
13 city's budgeting and part of this forecasting process. I
14 don't understand the objection to the extent it seems to
15 suggest that somehow forecasts should be developed that put
16 those numbers to one side because one really cannot put those
17 numbers to one side. That is the budget, that is the
18 forecast, and so I must have misunderstood the objection to
19 that degree.

20 THE COURT: Well, but I didn't quite hear in your
21 response how the information in these cash flows bears upon
22 whether these motions should be granted.

23 MR. STEWART: Well, it demonstrates, first of all,
24 the first cash flows, what financial information was
25 available to those who -- to the emergency manager and to the

1 city when they decided it was necessary or appropriate or
2 proper or advisable to enter into the forbearance agreement,
3 and other cash flows will show what the effect would be upon
4 the city if they had not entered into the forbearance
5 agreement, which corroborates the decision of their business
6 judgment to enter into it.

7 THE COURT: All right. Mr. Plecha, you're standing
8 there patiently. Is there something you want to add to
9 this --

10 MR. PLECHA: Just briefly, your Honor.

11 THE COURT: -- without repeating anything that's
12 already been said?

13 MR. PLECHA: And that's why I rise, your Honor, just
14 so I don't have to rise later so that the parties that are
15 not making live objections can rely on the objections and
16 arguments stated on the record by the objecting parties.

17 Thank you, your Honor.

18 THE COURT: Yes, sir. Absolutely.

19 MR. STEWART: Your Honor, I believe I said this
20 before, but one of the -- one of the points this testimony
21 will make is of critical importance to the city's finances of
22 having access to the casino revenues, which, of course, are
23 the very -- is the very stream of income that is freed up by
24 the forbearance agreement.

25 THE COURT: Let's dig a little deeper here. What is

1 the -- you say you offer this to show what information the
2 emergency manager and presumably his advisors had when they
3 were negotiating and deciding to enter into the forbearance
4 agreement.

5 MR. STEWART: Correct, yes.

6 THE COURT: What will your evidence show is the link
7 between -- the connection between what's in these forecasts
8 and that decision?

9 MR. STEWART: It will show that unless the casino
10 revenue is unencumbered and available freely to the city to
11 use to fund its operations and its plans, the city would not
12 have sufficient cash to operate.

13 THE COURT: Well, but to that Mr. Marriott says
14 that's only true because the city has made decisions to spend
15 its income in -- its other income in other ways, and he
16 points out that this is not a trial on how the city is
17 supposed to be spending its money.

18 MR. STEWART: Correct. And the city --

19 THE COURT: So how do I conduct this trial without
20 opening up that enormous issue and still admit this?

21 MR. STEWART: Because, your Honor, first of all,
22 we -- as I understood your ruling on Friday, it is that the
23 city's decisions on how it wishes to spend its money are not
24 what we're here to deal with today. That is why we're not
25 putting proofs on as to that, why we haven't -- for example,

1 why we don't intend to call Mr. Moore. We're instead taking
2 those as a given.

3 THE COURT: Well, but isn't this cash flow that very
4 evidence?

5 MR. STEWART: Well, the cash flow is the evidence of
6 what you have after you've made those expenditures, yes, but
7 that's true, of course, all expenditures, not just
8 restructuring or other ones that have come up, that came up
9 on Friday or that were the subject of other testimony or
10 argument before the Court. Since cash is fungible and every
11 expenditure made reduces cash to the amount of the
12 expenditure, this is true -- I think my thinking on Mr.
13 Marriott's objection is it would require, if we were to
14 accept it, that we strip the city's budget all the way down
15 to zero balance it and rebuild the entire thing before we go
16 further, but my understanding of your Honor's rulings have
17 been we sort of take the expenditures as we find them, and
18 what we have here is should we approve the assumption of this
19 contract, the settlement agreement, and one of the elements
20 as to should it be assumed is the sound exercise of business
21 judgment by the person who made the decision to enter into
22 it. And the financial effects of an agreement that is about
23 finances I would submit is very important to analyzing that
24 business judgment.

25 THE COURT: Mr. Marriott, what I hear Mr. Stewart

1 saying is that there's nothing inconsistent with admitting
2 this document and limiting the scope of this trial as I
3 proposed because under Section 903 and 904, the Court and,
4 frankly, the objecting parties are required to accept the
5 political decisions that it reflects.

6 MR. MARRIOTT: Judge, let me respond to that because
7 that exhibit and testimony embedded in that exhibit about
8 needs and uses is exactly the rabbit hole that I believe you
9 declined to go down on Friday, and, therefore, it's exactly
10 the rabbit hole as to which we have withdrawn witnesses that
11 would have provided testimony to that respect.

12 As and to the -- Mr. Stewart also indicated that the
13 finances of the city were important to the emergency
14 manager's decision to enter into the forbearance agreement.
15 The finances of the city is a need -- that's a need-based
16 argument. It's an argument from here's where we are, here's
17 where we need to be, and, therefore, we're going to enter
18 into the forbearance agreement, therefore, we're going to
19 enter into the DIP. And it was just that inquiry that was
20 cordoned off on Friday.

21 What I am proposing is left -- and I don't think
22 there's anything inconsistent or budgetary destroying about
23 this -- is Mr. Malhotra can certainly testify, Judge, it's
24 going to cost this under this forbearance agreement. This is
25 what the city is going to be out of pocket. The city's cash

1 position, the delta -- forget about the net. The net starts
2 to get into the need and uses. The city's cash position will
3 improve if we do this by \$30 million. Now, the city can then
4 argue persuasively or not that this deal was a good idea for
5 \$30 million in extra cash that the delta is sufficient
6 justification without getting into needs and uses, and it
7 seems to me, your Honor, that after Friday that's what
8 they're left to, and I don't think there's anything
9 inconsistent about holding them to that and refusing to admit
10 testimony or exhibits that go beyond that from Mr. Malhotra
11 or any other witness.

12 MR. STEWART: Your Honor, I'm not sure I still
13 understand Mr. Marriott's objection. As I understood him, he
14 was saying on Friday it was determined that we're not going
15 to go into the city's decisions about what it does and
16 doesn't want to spend money on, that those are something
17 that's beyond what the Court is going to do and beyond what
18 we're here to do this week. In other words, those
19 expenditures are in the budget.

20 THE COURT: I'm prepared to rule. The Court is
21 going to overrule the objection. It's a long way from the
22 Court will not judge the political decisions of the city on
23 how it will spend its money to considering as evidence what
24 those political decisions were regarding how the city spent
25 its money when those political decisions are relevant to the

1 issues before the Court, and the Court concludes they clearly
2 are. You may proceed.

3 MR. STEWART: Thank you, your Honor.

4 MR. MARRIOTT: Your Honor, can I -- given your
5 ruling and so I don't totally disrupt the case as it
6 proceeds, if I may assert a standing objection to testimony
7 or exhibits in connection with Mr. Malhotra's presentation
8 here today that go beyond those two areas that I believe are
9 appropriate.

10 THE COURT: Yes, sir. We will --

11 MR. MARRIOTT: Thank you.

12 THE COURT: We will allow that standing objection.

13 MR. STEWART: I believe, your Honor, I had moved the
14 admission of Exhibit -- City Exhibit 36.

15 THE COURT: 36? 36 is admitted.

16 MR. STEWART: Thank you, your Honor. Your Honor,
17 can I clarify? Was that the entire exhibit?

18 THE COURT: Ah, that's a good question. Thank you.
19 I meant to -- I meant to inquire about that myself. Your
20 examination justifies the admission into evidence of the
21 pages that you asked the witness about. Is that your offer?

22 MR. STEWART: I was going to offer the entire
23 document, your Honor, because he testified about having
24 attended the meeting that the proposal was made. This was
25 something shared with creditors, and although I didn't

1 examine him about the entire document, I think it's certainly
2 authenticated by the witness, and I think beyond that
3 objection --

4 THE COURT: Well, but what's the relevance of the
5 rest of this document?

6 MR. STEWART: It would have to be for others who are
7 going to be examining witnesses later, your Honor. I believe
8 it is because it is the baseline financial case for the city
9 that certainly did change between that date and when the
10 forbearance agreement was executed but is relevant because it
11 shows maybe for want of a better word the starting point and
12 explains in detail sort of how the city got to that starting
13 point.

14 THE COURT: Well, all right. I'm going to ask you
15 to reserve your offer of the rest of the document until that
16 relevance is more completely established. Let's review the
17 specific pages to make sure we all agree. What pages did you
18 ask of the -- ask the witnesses about?

19 MR. STEWART: Your Honor, like others --

20 THE COURT: And let's be sure --

21 MR. STEWART: -- I've been defeated by the number
22 system.

23 THE COURT: -- we use the precise page numbers and
24 not the conflicting page numbers.

25 MR. STEWART: Page 49 and 50 of the original

1 numbering.

2 THE COURT: Yes. Let's use the original numbering.

3 MR. STEWART: The original. Okay. And then I
4 believe thereafter it was 91. No. 90 and 91 if I have that
5 correct.

6 THE COURT: Is that right, sir? Mr. Malhotra, is
7 that right?

8 THE WITNESS: Yes, your Honor, that's right.

9 THE COURT: Those are the original page numbers with
10 your cash flow analyses on them? Yes?

11 THE WITNESS: Yes.

12 THE COURT: Is that right?

13 MR. STEWART: Yes. I thought the witness had said
14 "yes."

15 THE WITNESS: Yes. And 97 and 98.

16 MR. STEWART: Well, are you -- okay. 97 and 98,
17 your Honor.

18 THE COURT: There are three sets of numbers or there
19 are two? I thought there were two.

20 MR. STEWART: I thought there were two as well, your
21 Honor --

22 THE WITNESS: Okay.

23 MR. STEWART: -- so the witness is saying, your
24 Honor, I guess it's 49 and 50 and 97 and 98.

25 THE COURT: Is that right, sir?

1 THE WITNESS: Yes. That is correct.

2 THE COURT: All right. The Court will admit those
3 four pages only from Exhibit 36 at this time.

4 (City Exhibit 36, pages 49, 50, 97, and 98, received at
5 10:13 a.m.)

6 MR. STEWART: Thank you. Can we go to our next
7 exhibit, Exhibit Number 106?

8 BY MR. STEWART:

9 Q Mr. Malhotra, Exhibit 106 has been put on the screen for
10 you. Can you tell me what this exhibit is?

11 A This is the monthly cash flow forecast that was prepared
12 in June of this year.

13 Q And is there a date in the upper right-hand corner of the
14 document?

15 A June 21st, 2013.

16 Q Is that -- does that indicate the date it was prepared?

17 A Yes.

18 Q Who prepared this?

19 A I along with my team and members of the city.

20 Q And in preparing this, did you follow the same methods
21 and practices and techniques that you described to us earlier
22 when I was questioning you about your background?

23 A Yes.

24 Q If I could, let me ask -- and by the way, it's entitled
25 "Project Piston"?

1 A Yes.

2 Q What is Project Piston?

3 A That's the internal project name that we had created at
4 Ernst & Young for this engagement.

5 Q For your work for the City of Detroit?

6 A That is correct.

7 Q Let me direct your attention, if I could, to the last two
8 pages of our exhibit. That would be page 6 of 7 and 7 of 7.
9 Do you have them before you?

10 A Yes.

11 Q What are these?

12 A These are the monthly cash flow forecasts for fiscal year
13 2014 under a restructuring scenario.

14 Q And what do you mean when you say "restructuring
15 scenario"?

16 A I mean that we had removed from the disbursements any
17 payments related to unsecured obligations other than the
18 continuing payment of retiree healthcare from these
19 projections.

20 Q Okay. And where does one find any reference in this
21 document to the cost associated with restructuring?

22 A The investment related to the cost related to the
23 restructuring is highlighted on the last line, which says
24 "cumulative reinvestment expenditures" on that particular
25 page.

1 Q And where did that number come from?

2 A That number came from the work that was given to us by
3 the Conway MacKenzie team.

4 Q Now, let's look at the rest of your cash flow forecast
5 here, and I'm going to be very brief. As a general matter,
6 what does it -- what does it present for us?

7 A What it presents is what the cash position net of
8 distributions of the city would be on a monthly basis
9 throughout fiscal year 2014, and those cash numbers do not
10 include the reinvestment expenditures that are highlighted on
11 the last line of that page.

12 Q All right. So in the lower right-hand corner for
13 forecast for fiscal year 2014 --

14 MR. STEWART: And could we blow that up and
15 highlight it, please, lower right-hand corner?

16 BY MR. STEWART:

17 Q That is the number you have forecast before reinvestment
18 expenditures?

19 A That is correct.

20 Q And the reinvestment expenditures for that fiscal year
21 are a few lines below?

22 A That is correct.

23 Q Let's look at the next page, and if you'd tell us what
24 that is.

25 A The cumulative reinvestment expenditures through fiscal

1 year 2015 are 480.9 million, which is shown on the last line
2 of --

3 Q Generally, what is this -- what is this page?

4 A This page is the monthly cash forecast for fiscal year
5 2015.

6 Q So it's for the next fiscal year?

7 A That is correct.

8 Q And was it prepared in the same manner as the previous
9 one we talked about?

10 A Yes.

11 Q In the lower right-hand corner it shows a number of 367
12 million. Do you see that?

13 A Yes, I do.

14 Q What is that number?

15 A That represents the cash balance for the general fund
16 under the restructuring scenario without any reinvestment
17 expenditures.

18 Q And then there are reinvestment expenditures, however?

19 A That is correct.

20 Q And what is that number?

21 A 480.9 on a cumulative basis between '14 and '15.

22 Q And so both of those numbers are in the lower right-hand
23 corner of that page?

24 A That is correct.

25 MR. STEWART: Your Honor, I'd move the admission of

1 Exhibit 106.

2 THE COURT: Again, are you moving the entire
3 document or just pages 6 and 7?

4 MR. STEWART: The entire document, your Honor. In
5 the interest of time, I examined him in detail only about the
6 last two pages. If you'd like -- I mean I think I asked him
7 the question whether the entire document had been prepared
8 using the techniques and methods that he described to us, and
9 he said it had been.

10 THE COURT: Well, can you just tell us briefly
11 what -- briefly what the other pages are?

12 THE WITNESS: The first two pages would be the cash
13 flow scenarios under the base case; that is, if the city had
14 continued, your Honor, to make its unsecured payments per the
15 original schedule. And it showed the actual months plus what
16 the projected cash flows would look like under the base case.
17 And then the pages 6 and 7 show the cash flows under the
18 restructuring scenario where we pulled out the unsecured
19 payments out for unsecured creditors.

20 THE COURT: Any objections to the admission of the
21 document?

22 MR. MARRIOTT: Quick question, your Honor. Is it
23 correct that this is coming in as part of his opinion
24 testimony?

25 MR. STEWART: I was actually offering it for what it

1 is, which is it's coming in as an exhibit for the city.

2 MR. MARRIOTT: I mean otherwise if it's -- if it's
3 not reflecting his opinion, I think it's hearsay. If it's
4 simply reflecting his opinion, then -- I mean if this is
5 offered as his opinion as to --

6 THE COURT: I think it's abundantly clear that it
7 is.

8 MR. MARRIOTT: Okay. I just wanted to clarify that.
9 The other thing, your Honor, is -- and I won't do this again,
10 but this would be subject to my standing objection.

11 THE COURT: Yes, absolutely.

12 MR. STEWART: And, your Honor, to pretermit the
13 objection, I'm prepared to go into a business record
14 foundation for it that would take care of the hearsay
15 objection, but I wanted to move things along.

16 THE COURT: Exhibit 106 is admitted.

17 (City Exhibit 106 received at 10:20 a.m.)

18 MR. STEWART: Thank you, your Honor.

19 BY MR. STEWART:

20 Q Let's, if we could, now go to our next exhibit, which is
21 Exhibit 111. And, Mr. Malhotra, before I ask you details
22 about this, I'm going to ask you a couple of background
23 questions. In connection with the pending motions, were you
24 asked to perform certain financial analyses?

25 A Yes.

1 Q And are your analyses reflected on Exhibit 111?

2 A Yes.

3 Q What is it that you were asked to do?

4 A I was asked to prepare three scenarios that -- from a
5 cash standpoint for through fiscal year 2015.

6 Q And let me ask you scenario by scenario what they are
7 before we get into the substance of this exhibit. What is
8 scenario number one?

9 A Scenario number one is the cash balance if the post-
10 petition financing was closed, the swap settlement was
11 completed, and none of the city's casino monies were trapped.

12 Q I'm going to stop you right there so we have our
13 terminology straight. You here speak of something called DIP
14 financing. That's the post-petition financing; correct?

15 A Yes.

16 Q And scenario number one assumes that that part of the
17 motion is approved by the Court and that the financing
18 closes; correct?

19 A Yes.

20 Q Okay. Next you have something called a swap settlement.
21 Tell us, please, what you mean when you use the words "swap
22 settlement"?

23 A I mean the out -- the swaps that are currently out of the
24 money are paid by the DIP financing or the post-petition
25 financing and thereby the city no longer has to pay any swap

1 interest that it's currently scheduled to pay.

2 Q And is the forbearance agreement that we've been talking
3 about, is that a synonym for the swap settlement?

4 A Yes.

5 Q Third, you have something called no casino trap. What do
6 you mean when you say "no casino trap"?

7 A I mean that the city continues to have free access to its
8 casino revenues as it always has, and they are not trapped by
9 the swap counterparties.

10 Q So let me ask you a minute about the casino revenues.
11 What are the casino revenues?

12 A Those are the revenues the city gets from the three
13 casinos that are in Detroit.

14 Q And how much are the casino revenues every year?

15 A Approximately \$170 million annually.

16 Q And why do you refer to them being trapped?

17 A Because the city is in default under its existing
18 agreements with the swap counterparties, and my understanding
19 is that the swap counterparties have the right to trap those
20 monies.

21 Q What happens if the monies are trapped?

22 A If the monies are trapped, the city would lose
23 potentially on an annualized basis \$170 million of tax
24 receipts; however, that would get offset by \$50 million of
25 swap interest that the city would thereby not make, so it

1 would be a net impact of approximately \$120 million on an
2 annualized basis in terms of a reduction of cash available to
3 the city.

4 Q So that was scenario number one. What is scenario number
5 two?

6 A Scenario number two represents the forecasted cash
7 balances under the scenario that there is no DIP financing,
8 there is no swap settlement, and the city continues to have
9 access to its casino revenues.

10 Q And what is scenario number three?

11 A Scenario three shows the city having no DIP financing, no
12 swap settlements, the casino revenues are trapped, and the
13 city does not make any swap interest payments going forward.

14 Q Now, something you referred -- I'm going to go briefly to
15 a related matter. When you spoke about the swap settlement,
16 you mentioned something called swaps payments.

17 A Yes.

18 Q What are swaps payments?

19 A The swap payments I was referring to are the swap
20 interest payments of \$4.2 million the city makes every month.

21 Q Now, if there's a swap settlement, what happens to the
22 swap payments?

23 A The city will not be required to make those payments
24 going forward.

25 Q What effect would that have upon the city's cash

1 position?

2 A The city's cash position would improve for that \$4.2
3 million that the city would not have to make in swap interest
4 and would get offset by any interest the city pays on the
5 take-out financing.

6 Q Now, you mentioned that -- the interest the city pays on
7 the take-out financing. What is that?

8 A I was referring to the financing that is used to -- for
9 the swap settlement. The city would have to pay interest on
10 that, and that would reduce the net impact of the benefit on
11 a monthly basis the city would get from the swap settlement.

12 Q And have you calculated what the net benefit would be?

13 A Yes.

14 Q And what have you concluded?

15 A In terms of the monthly impact, the amount of swap
16 interest that the city is currently paying is \$4.2 million,
17 and the potential interest on the new financing on a monthly
18 basis could be somewhere between \$700,000 to about a million
19 five on a monthly basis, so on a net monthly impact, the
20 amount could be -- the benefit of the interest could be as
21 high as \$3 million a month, or on the low end the benefit
22 could be about, I think, a million five a month.

23 Q Have you prepared a demonstrative exhibit to show how
24 your calculations were made?

25 A Yes.

1 MR. STEWART: Could we put up demonstrative Exhibit
2 141?

3 BY MR. STEWART:

4 Q And could you tell us, once again, how your calculations
5 work? But we don't need to redo them all. You can be brief.

6 A Sure.

7 Q First of all, what years? What periods does this relate
8 to?

9 A This refers to fiscal year '14 and fiscal year '15.

10 Q Okay. And it shows swap payments.

11 A That's right. It shows swap payments of \$45 million
12 annually in terms of the approximate payments that have to be
13 made. The swap termination loan refers to the interest that
14 would be payable on the approximate \$227 million of the swap
15 settlement amount at a range of an interest rate ranging from
16 3-1/2 percent, which would equate to the \$7.3 million in
17 interest, and roughly -- I think it was about five percent on
18 the \$13.6 million.

19 Q And so you reach a conclusion about cash flow benefits?

20 A Yes.

21 Q And that's what appears here, that it is between 31.4 and
22 37.7 million per year for this fiscal year and the next
23 fiscal year?

24 A Yes, under these assumptions.

25 Q Okay. Thank you. Mr. Malhotra, going back to Exhibit

1 111, did you prepare -- the numbers that appear on this
2 exhibit, are they the result of cash flow calculations that
3 you performed?

4 A Yes.

5 MR. STEWART: Let's put up Exhibit 108, page 1.

6 BY MR. STEWART:

7 Q Do you see Exhibit 108?

8 A Yes, I do.

9 Q What is Exhibit 108?

10 A Exhibit 108 is the cash flow forecast under the scenario
11 that the DIP financing is completed is the way we had shown
12 it here.

13 Q In other words, under scenario number one?

14 A That is correct.

15 Q Who prepared Exhibit 108?

16 A I did in conjunction with my team and members of the
17 city's management team.

18 Q And was it prepared using the same methods and approaches
19 that you testified about earlier?

20 A Yes.

21 Q Let's look, if we could, at page 2 of Exhibit 108. What
22 does page 2 tell us?

23 A Page 2 is a summary of the cash flows as were shown in
24 the June 14th proposal.

25 Q Okay. Now, where is that?

1 A It's in the first line that says "funds available for
2 unsecured claims per creditor proposal."

3 Q So that's referring to the June 14 document?

4 A That is correct.

5 Q Okay. And then you have a series of items below that.
6 Could we -- and I'm going to ask you to describe a few of
7 them. What is the first one? It says "retiree healthcare
8 transition cost in CF." What is that item?

9 A That represents the estimate for retiree healthcare costs
10 that are in the cash flows that are shown as a DDOT because
11 they were not included in the line item up above to show that
12 retiree healthcare costs, which were an unsecured claim, were
13 being paid out from a liquidity standpoint per the decision
14 of the emergency manager, and that's what we were showing in
15 the first line.

16 Q And the next line is "higher transportation department
17 subsidy"?

18 A Those were other cash impact at the Department of
19 Transportation in which the department would likely require a
20 higher subsidy in the next couple of years for -- related to
21 the payment of retiree healthcare and other working capital
22 that was not incorporated in the first line.

23 Q And next, account payable vendor risk in CF. What is
24 that?

25 A That was the cash impact of potential critical vendor

1 payments or other potential trade disruption that could have
2 been caused as a result of the bankruptcy filing, so those
3 are, again, cash flow impacts that were not reflected in the
4 first line.

5 Q And where do these numbers come from?

6 A They were -- they came together based on discussions with
7 the emergency manager, the other advisors, and the city's
8 management team.

9 Q We then have a couple of smaller items. Then we have an
10 item called reinvestment timing change, see memo one below.
11 First of all, what is a timing change?

12 A A timing change is a -- compared to the original budget,
13 a timing change is when the total amount of the expense or
14 the revenues has not changed; however, the timeline in terms
15 of when that revenue or expense would be realized has been
16 changed.

17 Q And there's a reference to memo one below?

18 A That is correct.

19 Q What is memo one?

20 A Memo one down below reflects the net impact of changing
21 the expenditures or deferring certain expenditures compared
22 to the original proposal on June 14th and what the latest
23 thinking was to -- with respect to the reinvestment
24 expenditures so that the city could maintain a base level of
25 liquidity over the forecast period.

1 Q The next two lines refer to DIP -- the DIP --

2 THE COURT: Is there something you'd like to say,
3 sir?

4 MR. PEREZ: Yes, your Honor. Alfredo Perez. Your
5 Honor, if he's going to testify about the exhibit, I think he
6 should -- they should proffer it into evidence before they do
7 that. I've been trying to get the Court's attention, but --

8 MR. STEWART: Oh, I was going to actually do it
9 after examining him, Judge. I'm happy to move it now.

10 THE COURT: If you have an objection, feel free to
11 interrupt.

12 MR. PEREZ: Yes, your Honor.

13 THE COURT: I'm sorry, Mr. Stewart.

14 MR. STEWART: I was actually going to lay this
15 foundation and then move it into evidence to prepermit an
16 objection, but I'm happy to move it right now.

17 THE COURT: Well, I would only say to you that as a
18 general rule, you shouldn't ask the witness about the
19 contents of a document until it's in evidence, but you're
20 offering Exhibit 108 now?

21 MR. STEWART: Yes, I do.

22 THE COURT: Is there any objection to Exhibit 108?

23 MR. PEREZ: Your Honor, in addition to the
24 objections raised by Mr. Marriott, this exhibit is dated
25 September 16th, so it's well after the July swap settlement

1 agreement, so, your Honor, it could not have been the premise
2 for the political considerations at that time.

3 MS. ENGLISH: Your Honor, Caroline English. The
4 same objection also applies to Exhibit Number 111, which was
5 discussed just prior to Exhibit 108.

6 THE COURT: Okay. And that has not been offered, so
7 hold that until it is. We're talking about Exhibit 108 now.

8 MR. STEWART: Your Honor, in response to the
9 objection, because of the terms of the forbearance agreement,
10 which gives the city the right in certain circumstances to
11 walk away from it, it is relevant what the financial picture
12 is today just as it was when the city chose to enter into the
13 agreement.

14 THE COURT: I think the relevance is arguable, so
15 the Court will overrule that objection and admit Exhibit 108
16 into evidence.

17 (City Exhibit 108 received at 10:34 a.m.)

18 MR. MARRIOTT: Your Honor, I'm --

19 THE COURT: Sir.

20 MR. MARRIOTT: -- sorry to ask for this
21 clarification again, but is this being offered as a component
22 of his expert opinion?

23 MR. STEWART: It is.

24 MR. MARRIOTT: Thank you.

25 MR. STEWART: In fact, just to simplify it, so will

1 the next few opinions, Mr. Marriott, the next few documents.

2 MR. MARRIOTT: That's fine. If you would just tell
3 me if we get to one that's not.

4 MR. STEWART: Okay.

5 MR. MARRIOTT: Thank you.

6 MR. STEWART: All right.

7 BY MR. STEWART:

8 Q Mr. Malhotra, let's go back to where we were. There's a
9 line that says "swap payment savings from settlement." Do
10 you see that?

11 A Yes.

12 Q Okay. And is that the -- are those the savings you
13 described to us a few minutes ago?

14 A Yes.

15 Q And then below that something entitled "refunding bond
16 proceeds drawn from escrow."

17 A Yes. Those are \$20 million that we've continued to
18 forecast of receiving from the bond proceeds escrow, the
19 escrow agreement that exists with the city today.

20 Q And so as a result of the --

21 THE COURT: Excuse me one second. I want to be sure
22 I follow this. On the line that says "swap payment savings
23 from settlement" that you just testified about, you've got
24 33.7 for fiscal year '14. That's our current fiscal year;
25 right?

1 THE WITNESS: That is correct.

2 THE COURT: And then you've got 50.6 for '15; right?

3 THE WITNESS: Yes, your Honor, fiscal year '14.

4 THE COURT: Are those the two numbers you just
5 testified to when you were showing us this demonstrative
6 exhibit? I think it was 141.

7 THE WITNESS: Your Honor, the 50.6 is a gross
8 number, which would compare to the 40, and the 33.7 is for a
9 partial year. Those numbers would align close to the \$45
10 million that was in the first line of the swap payments;
11 however, to compare the two --

12 THE COURT: Let's go back to 141, please. That was
13 the demonstrative, wasn't it?

14 MR. STEWART: Indeed, yes, your Honor.

15 THE COURT: Okay. I don't see \$50 million on here.
16 What am I missing?

17 THE WITNESS: The first line, your Honor, of the
18 swap payments was an approximate number that was used here of
19 45 million versus 50. The payments are \$4.2 million a month,
20 and that's how we come up with somewhere between this 45 and
21 \$50 million range that we always use, but the swap payments
22 that would -- the swap interest payments that would not be
23 made would be synonymous with that first line of swap
24 payments of \$45 million or, as laid out in the cash flows, as
25 you will see, of \$50.6 million, so those two numbers ideally

1 should be exactly the same, but that would be -- that's the
2 line item that's being referred to, your Honor, in that
3 particular exhibit.

4 BY MR. STEWART:

5 Q So which of the two numbers, 45.9 or 50 million, is the
6 more accurate number?

7 A 50 million.

8 THE COURT: All right. Let's just go back to 108,
9 please. So the 33.7 and the swap payment savings from
10 settlement for fiscal year -- thank you -- fiscal year 2014
11 is a partial year?

12 THE WITNESS: That is correct, your Honor.

13 THE COURT: What part?

14 THE WITNESS: At the time we were doing this, we
15 would have estimated the closing to be in the November time
16 frame during this scenario.

17 THE COURT: You may proceed, sir.

18 MR. STEWART: Thank you.

19 BY MR. STEWART:

20 Q And so our calculations here, Mr. Malhotra, produce
21 something called net cash flow per DIP financing scenario?
22 That's \$87.6 million?

23 A That is correct.

24 Q And what does that represent?

25 A That represents the net cash flow that will actually be

1 generated over the fiscal year 2014 under the scenario where
2 the DIP proceeds were received, the swaps were settled, the
3 city does not make the swap interest payments as well as
4 continues to make the payments as highlighted in the first
5 few line items with respect to ongoing payment of retiree
6 healthcare, accounts payable payments, et cetera.

7 Q Let's look at the next two pages of Exhibit 108. Can you
8 tell me what these two pages are?

9 A Page 3 of 17 represents the monthly cash flow forecast
10 for fiscal year 2014, including two months of actuals for the
11 month of July and August under the DIP financing scenario.

12 Q And the next page?

13 A The next page shows the monthly projections through
14 fiscal year 2015 under the same scenario.

15 Q And what is page 5?

16 A Page 5 is a summary of the annual receipts and
17 disbursements for fiscal year 2014 through fiscal year 2017
18 under the same scenario.

19 Q Okay. And after that are a series of appendices.

20 A Yes.

21 Q And without getting into their contents, what are these
22 appendices?

23 A Those would be supporting schedules that would show the
24 details behind the calculation of the swap interest payments
25 as well as the details with respect to certain other

1 subschedules like the reinvestment cost detail broken down in
2 different line items that were included in the first
3 scenario.

4 Q Now, let's move, if we could, to Exhibit 109, and what is
5 Exhibit 109?

6 A Exhibit 109 shows the -- is the cash flow forecast
7 through fiscal year 2017 under the scenario where there was
8 no DIP financing and no swap settlement and the casino monies
9 continued to flow to the city.

10 Q Is this scenario two that you spoke about with respect to
11 Exhibit 111?

12 A Yes.

13 Q And who prepared this?

14 A I did along with my team and members of the management
15 team.

16 Q And did you prepare it consistent with the methods you
17 used for Exhibit 108?

18 A Yes.

19 Q And with the methods you described to us earlier?

20 A Yes.

21 Q Look, if we could, at page 2 of this exhibit. Do you
22 have it before you?

23 A Yes.

24 Q Have some items been removed from the part of the
25 document that speaks of funds available for unsecured claims?

1 A Yes.

2 Q Why have they been removed?

3 A Because this scenario had no DIP, and so the DIP proceeds
4 were removed. So was the financing cost of the DIP financing
5 as well as the swap interest payments in this format will
6 continue to get paid, so the savings line was no longer in
7 this scenario.

8 MR. STEWART: Your Honor, I'd move the admission of
9 109, and I apologize for not having done it before I asked my
10 last question.

11 MR. PEREZ: Your Honor, I would make the same
12 objection. This is in October, which is even further removed
13 from the decision date.

14 THE COURT: The objection is overruled, and Exhibit
15 109 is admitted.

16 (City Exhibit 109 received at 10:42 a.m.)

17 MR. STEWART: Put up Exhibit 110.

18 BY MR. STEWART:

19 Q Mr. Malhotra, what is Exhibit 110?

20 A Exhibit 110 is the cash flow forecast for fiscal year
21 2017 under the scenario where --

22 Q Is this just scenario three?

23 A Yes.

24 Q And you've already described scenario three to us.

25 A I have.

1 Q Okay. Who prepared Exhibit 110?

2 A I did along with my team and the management team of the
3 city.

4 Q And did you prepare it using the same methods that you
5 used in the previous two exhibits?

6 A Yes.

7 MR. STEWART: Your Honor, I'd move the admission of
8 Exhibit 110.

9 MR. PEREZ: Same objection, your Honor.

10 THE COURT: All right. Exhibit 110 is admitted.

11 (City Exhibit 110 received at 10:43 a.m.)

12 BY MR. STEWART:

13 Q And if we could go to page 2 of Exhibit 110,
14 Mr. Malhotra. Once again, there's been a change in the items
15 under "funds available for unsecured claims." Do these
16 changes or differences simply reflect that the scenario has
17 different assumptions?

18 A Yes.

19 Q Let's go, if we could, to Exhibit 111, and this, of
20 course, is the graphic representation that you prepared.

21 MR. STEWART: And, your Honor, I would move the
22 admission of Exhibit 111 before I ask the witness more
23 detailed questions; however, I could ask one foundational
24 question which might make it simpler.

25 BY MR. STEWART:

1 Q Are Exhibits 108, 109, and 110 the calculations that were
2 used to develop the graphic representation of cash position
3 that we see in Exhibit 111?

4 A Yes.

5 MR. STEWART: I'd move the admission of the exhibit.

6 THE COURT: Any objection to 111?

7 MS. ENGLISH: Objection, your Honor. Carol English
8 appearing on behalf of Ambac. Same objection that this
9 document again was prepared in September long after the
10 decision was made to enter into the forbearance agreement.

11 THE COURT: All right. That objection is overruled,
12 and Exhibit 111 is admitted.

13 (City Exhibit 111 received at 10:44 a.m.)

14 BY MR. STEWART:

15 Q Mr. Malhotra, let me now ask you about what Exhibit 111
16 depicts. First of all, scenario number one, is that the top
17 line of the exhibit?

18 A Yes.

19 Q And if I understood you correctly, that shows the city's
20 cash position if the swap settlement occurs; correct?

21 A Yes.

22 Q And no trapping of the casino revenues?

23 A That is correct.

24 Q And what is the conclusion that you've reached with
25 respect to the city's cash position under that scenario at

1 the end of this fiscal year and also at the end of next
2 fiscal year?

3 A That the city's liquidity would be in excess of a hundred
4 million dollars of -- through the balance of this calendar --
5 approximately the balance of this calendar year and come down
6 to about \$61 million by the end of June 2015 based on the
7 assumptions that were used for these cash flows.

8 Q Now, let's look at scenario number three. Is that the
9 bottom line?

10 A Yes.

11 Q Okay. And scenario number three is the scenario where
12 there's no swap settlement and the casino revenues are
13 trapped; is that right?

14 A That is correct.

15 Q What conclusions did you reach about the city's cash flow
16 or cash position, I should say, under that scenario at the
17 end of this fiscal year and also at the end of next fiscal
18 year?

19 A Under that scenario, based on the assumptions we're
20 using, the city would likely run out of cash by the end of
21 this calendar year, face a cash shortfall in excess of a
22 hundred million dollars by about July of 2014 with the cash
23 hole being as high as \$284 million by June of 2015.

24 Q I should have asked you, by the way, about the dotted
25 line that appears, the horizontal dotted line on Exhibit 111.

1 What is that? What does that depict?

2 A That is showing what -- when the city's cash balances go
3 below \$50 million.

4 Q And why have you chosen \$50 million as the place on
5 Exhibit 111 -- pardon me -- to put that dotted line?

6 A We use that to represent for about five weeks' worth of
7 payroll and benefits payments, and so essentially to
8 encapsulate what should ideally be some sort of minimum level
9 of liquidity the city should maintain.

10 MR. MARRIOTT: Objection, your Honor. This witness
11 was qualified to give cash flow projections, not to give an
12 opinion as to what the appropriate liquidity state of the
13 city is.

14 MR. STEWART: I simply asked him why he put the line
15 where he put it.

16 BY MR. STEWART:

17 Q Did that -- did you develop the 50 number or did someone
18 else tell you about it?

19 A We did.

20 MR. MARRIOTT: Your Honor, again, same objection.
21 This testimony is now being offered on the basis that \$50
22 million is the appropriate liquidity balance for the city,
23 and this witness was not qualified. I mean he may have done
24 the math after he was told, "This is what we have to be able
25 to pay," but as and to the extent it was his conclusion that

1 \$50 million is the appropriate liquidity balance for the
2 city, he hasn't been qualified to give that opinion.

3 MR. STEWART: I think he testified, Judge, that's
4 five weeks' payroll, and he is qualified to tell us what five
5 weeks' payroll is. If one is to then say, well, he's not
6 qualified --

7 THE COURT: Well, but the underlying premise is that
8 five weeks' payroll and benefits are an appropriate minimum
9 liquidity for a municipality of this size. Yeah, I have to
10 agree that I didn't quite hear his qualifications to make
11 that judgment, so the objection is sustained. You may try --

12 MR. STEWART: Let me try it again.

13 THE COURT: -- of course, to qualify him for that
14 purpose.

15 BY MR. STEWART:

16 Q Mr. Malhotra, I believe you testified that \$50 million is
17 five weeks' payroll and benefits for the city?

18 A Yes.

19 Q If the city's cash is below \$50 million, what is the --
20 is the city able to make its payroll?

21 A It depends on the week and the receipts that come in
22 during the week. It depends on that particular week.

23 Q Is it in jeopardy of not making its payroll?

24 A Given the fixed nature of the payments and the timing of
25 when receipts come in, that's what we were highlighting as a

1 risk threshold.

2 Q In the course of doing financial analysis for the city,
3 you have had occasion to see what its -- how much its
4 expenses happen to be week by week and month by month?

5 A Yes.

6 Q And what have you found when it comes to payroll and
7 benefits?

8 A That the estimate of -- you know, it's five weeks' worth
9 of payroll and benefits -- is \$50 million, and when cash has
10 been extremely tight because of lumpiness of payments that
11 come in, for instance, state aid, which come in every other
12 month, there have been low points from an intra-month
13 standpoint on a week-by-week basis where liquidity is tight
14 or has been tight historically.

15 Q When you say liquidity is tight, what do you mean?

16 A The cash available for the city to make its ongoing
17 obligations is under pressure because of the amount of cash
18 available compared to the amount of disbursements that need
19 to be made.

20 MR. STEWART: Your Honor, with that clarification, I
21 guess the \$50 million line is a line at which the city's
22 liquidity comes under pressure as he testified to.

23 MR. MARRIOTT: Your Honor, I'm going to object
24 again. It comes under pressure only if one assumes that five
25 weeks' worth of payroll is the right number versus four,

1 versus three, versus six, versus seven. Again, this witness
2 can testify that he came up with \$50 million because he used
3 five weeks of payroll as the appropriate benchmark, but he
4 can't testify and has not been qualified to testify on the
5 basis -- to the effect that five weeks is the right number.

6 MR. STEWART: Your Honor, I think it goes to weight.
7 I'd like to move on. 50 million is where he says in his
8 analysis liquidity comes under pressure, and I'd leave it at
9 that.

10 THE COURT: The Court is satisfied that the witness
11 has established his expertise to give an opinion regarding
12 this, and the objection is overruled.

13 MR. STEWART: Okay.

14 BY MR. STEWART:

15 Q Finally, Mr. Malhotra, we have the middle scenario,
16 scenario number two. That's the scenario where there's no
17 swap settlement but also no trapping of the casino monies.

18 A That is correct.

19 Q And what did you determine in terms of the city's cash
20 position for the end of this fiscal year and the end of next
21 fiscal year under that scenario?

22 A Under the assumptions we were using that the scenario
23 where there was no DIP financing and no swap settlement and
24 the city had ongoing access to the casino revenues, the
25 city's liquidity -- the city's cash available for the general

1 fund would be out of cash by roughly March of 2014 and
2 dipping down below that \$50 million threshold even earlier
3 than that, and the city would likely have a cash shortfall of
4 \$78 million by December of 2014 and approximately \$69 million
5 by June of 2015.

6 Q Now, these were analyses you prepared back in September
7 and October of this year?

8 A Yes.

9 Q And a couple of months of actuals have happened since
10 then?

11 A Yes.

12 Q To your knowledge, how have actual results affected the
13 conclusions that you show on Exhibit 111?

14 A Based on the information that we are working with as of
15 now, the cash balances are likely to be lower based on the
16 current assumptions we have compared to the cash flows
17 illustrative on this page.

18 Q Let's put up Exhibit 115 finally. What is Exhibit 115?

19 A Exhibit 115 is an interim working draft of cash flows
20 that we are working on through fiscal year 2015 and '17.

21 Q And when you say "interim," what do you mean?

22 A The assumptions -- all of the assumptions with respect to
23 the forecasts have not been approved by the emergency manager
24 yet, which we are working through.

25 Q Who prepared Exhibit 115?

1 A It is myself, my team, along with the other advisors.

2 Q And what -- did you use the same methods and approaches
3 that you used in Exhibits 108, 109, 110, and other cash flows
4 I've asked you about?

5 A Yes.

6 MR. STEWART: Your Honor, I'd move the admission of
7 Exhibit 115.

8 THE COURT: Any objections?

9 MR. PEREZ: Yes, your Honor. Same objection, your
10 Honor. These are dated December 9th, basically last week, so
11 it could not have had anything to do with the political
12 decision.

13 THE COURT: The Court concludes they are arguably
14 relevant, and -- it is arguably relevant, so Exhibit 115 is
15 admitted.

16 (City Exhibit 115 received at 10:54 a.m.)

17 BY MR. STEWART:

18 Q If we could look at page 2 of Exhibit 115, Mr. Malhotra,
19 what scenario is this exhibit describing?

20 A It would be describing scenario one.

21 Q Scenario number one. And if we could go to the
22 calendarization, which would be page 2 and page 3, let's
23 start with page -- I'm sorry -- page 3 and page 4, let's
24 start with page 4. What does this forecast show the city's
25 projected cash position net of distribution as being -- and

1 that would be the lower right-hand corner of the document --
2 at the end of fiscal year 2015?

3 A Based on the assumption that we were working with in this
4 interim draft, the cash position would be \$6.5 million by
5 June of 2015.

6 Q Do you know why it is so low?

7 A Yes. It's due to new information that we have gotten in
8 the last couple of months.

9 Q Let's look at page 3 of 13 and to the projection of cash
10 positions for the fiscal year '14. First of all, what does
11 this predict or forecast that the cash position will be at
12 the end of the year?

13 A Under these assumptions, it shows that the cash forecast
14 would be \$72.9 million at June 2014.

15 Q And that's less than what Exhibit 111 had forecast?

16 A Yes.

17 Q And what's the reason for the lower number?

18 A The number is lower because of the new information that
19 we received in the last couple of months related to other
20 events that are causing the cash balance to be lower, such as
21 approximately \$20 million in incremental retiree healthcare
22 costs because the implementation of the new plans has been
23 pushed back two months compared to what the original
24 forecasts had assumed. In addition, we have received updated
25 professional fee estimates from some of the advisors,

1 including using an estimate for the payment of professional
2 fees for the Retiree Committee that were not in the original
3 forecast. In addition, compared to the original forecast
4 where the swap settlement and DIP financing was likely to be
5 in the November time frame, these -- that did not happen, so
6 the city had to make an extra \$4 million worth of a swap
7 interest payment that was not in the original forecast as
8 well as based on the information given to us by the
9 investment banker, we are using the full flex terms of the
10 interest rate under the post-petition financing, so those are
11 some of the reasons why the cash flows are trending lower
12 compared to what we had originally thought. Of course,
13 there's other ins and outs, but those are the major items.

14 Q I noticed that the cash flow -- cash position actual for
15 November of this fiscal year -- and it's in the middle at the
16 bottom -- is said to be \$107.1 million.

17 A That is correct.

18 Q Is that higher than originally predicted?

19 A It is higher than originally predicted, yes.

20 Q Can you tell us why?

21 A Yes, because the original forecast did include the city
22 starting its -- to spend its money on reinvestment
23 expenditures through the September through November time
24 frame. That was budgeted to be approximately \$25 million,
25 which payments have not been made. The professional fees

1 that have been made to date are roughly \$13 million lower
2 than forecast due to timing. The city is also behind in
3 terms of making certain accounts payable payments because of
4 the classification of the pre-petition and post-petition
5 invoices and the analyses that are going on in the accounts
6 payable department, which are essentially timing related, so
7 I would say those are some of the primary reasons why the
8 cash position from a timing standpoint is better.

9 MR. STEWART: Thank you. That's all the questions I
10 have of the witness, your Honor.

11 THE COURT: All right. We'll take our morning break
12 now. For your information, by my calculations, the city has
13 remaining 319 minutes. The objectors have 477. We'll be in
14 recess until 11:20, please.

15 THE CLERK: All rise. Court is in recess.

16 (Recess at 10:59 a.m., until 11:20 a.m.)

17 THE CLERK: All rise. Court is in session. Please
18 be seated.

19 MR. ARNAULT: Bill Arnault on behalf of Syncora.

20 CROSS-EXAMINATION

21 BY MR. ARNAULT:

22 Q Hello again, Mr. Malhotra. How are you?

23 A Good. Thank you.

24 Q I take it you believe that the testimony that you
25 provided this morning was reliable expert testimony; isn't

1 that correct?

2 A Yes.

3 Q And you believe that the information that you provided
4 this morning is something that the Court can rely upon;
5 correct?

6 A Yes.

7 Q You believe that the cash flow forecasts that you
8 provided are forecasts that the Court can rely upon; correct?

9 A Yes, with those assumptions in there.

10 Q Yeah. And the testimony that you provided about the
11 projections and the scenarios that we saw, those incorporated
12 the cash flow forecasts; correct?

13 A Can you repeat your question, please?

14 Q Yeah, sure. So the scenarios that we saw in your
15 testimony, that was based upon the cash flow forecasts that
16 you discussed this morning; correct?

17 A Yes.

18 Q If you could turn to City Exhibit 106, please.

19 THE COURT: Do you want it on the screen, counsel?

20 MR. ARNAULT: Page 1 on the screen.

21 THE COURT: You do want it on the screen?

22 MR. ARNAULT: Yes, please.

23 THE COURT: Okay.

24 THE WITNESS: I'm there.

25 BY MR. ARNAULT:

1 Q All set? Okay. Let's take a look at this first page of
2 City Exhibit 106. If we look at the title, it says, "Work in
3 process subject to material change." Do you see that?

4 A Yes.

5 Q And that was a true statement at the time; correct?

6 A Yes.

7 Q And if we go down and we look at the first paragraph
8 there in red, if we look at the second sentence -- actually,
9 let me back up. You prepared this document; correct?

10 A We did in conjunction with the management team and the
11 other advisors, yes.

12 Q Okay. And you reviewed this document; correct?

13 A Yes.

14 Q Let's take a look at the second sentence of that first
15 paragraph there. In it you say the information contained
16 herein is not intended to be and should not be relied upon by
17 any third party or as legal, auditing, or accounting advice;
18 correct?

19 A That's what it says.

20 Q And that was a true statement at the time you made it;
21 correct?

22 A That's our standard disclaimer, yes.

23 Q And that was a true statement at the time you made it;
24 correct?

25 A Yes.

1 Q If we move down to the second paragraph and we take a
2 look at the second sentence, you write, "With respect to
3 prospective financial information relative to the client,
4 Ernst & Young, LLP, did not examine, compile, or apply
5 agreed-upon procedures to such information in accordance with
6 attestation standards established by the AICPA, and E&Y
7 expresses no assurance of any kind on the information
8 presented." That was a true statement at the time; correct?

9 A Yes. We did not perform audit procedures.

10 Q Yeah. And E&Y expresses no assurance of any kind on the
11 information presented; correct?

12 A That is correct. That is what it says, yes.

13 Q Okay. If we move down to the last sentence of the second
14 paragraph, it says, "Accordingly, reliance on this report is
15 prohibited by any third party as the projected financial
16 information contained herein is subject to material change
17 and may not reflect actual results"; correct?

18 A That's what the sentence reads, yes.

19 Q And that was a true statement; correct?

20 A Yes.

21 Q If we could now turn to City Exhibit 108, please.

22 Mr. Malhotra, this is another cash flow forecast; correct?

23 A That is correct.

24 Q And it appears as though it was prepared on September 16,
25 2013; is that correct?

1 A Yes.

2 Q And you prepared this document; correct?

3 A Yes, under the similar way I explained earlier.

4 Q I'm sorry. What was that?

5 A Yes, in conjunction with my team, the other advisors, and
6 the management team, yes.

7 Q And you reviewed this document before it went out;
8 correct?

9 A I did, yes.

10 Q And if we look at the title, like City Exhibit 106, this
11 document also states that it's a work in progress subject to
12 material change; correct?

13 A Yes.

14 Q And that was a true statement at the time; correct?

15 A That's what it -- yes. That's what it says.

16 Q And that was a true statement; correct?

17 A It includes forecasted information. Assumptions are
18 always subject to change, so, yes.

19 Q And if we move down to the first paragraph, and, again,
20 looking at the second sentence there, you say, "Accordingly,
21 the information contained herein is not intended to be and
22 should not be relied upon by any third party or as legal,
23 auditing, or accounting advice"; correct?

24 A That is correct. It is not legal, accounting, or audit
25 advice. That is correct. That's what it says.

1 Q Right. And it also says it should not be relied upon by
2 any third party; correct?

3 A That's what the sentence reads. That's correct.

4 Q And that was a true statement; correct?

5 A Yes.

6 Q If we move down to the second paragraph and we look at
7 the second sentence, it says, "With respect to prospective
8 financial information relative to the client, Ernst & Young,
9 LLP, did not examine, compile, or apply agreed-upon
10 procedures to such information in accordance with attestation
11 standards established by the AICPA, and E&Y expresses no
12 assurance of any kind on the information presented." That
13 was a true statement; correct?

14 A That's what the sentence reads. We did not perform audit
15 or attestation procedures on this document.

16 Q And you express no assurance of any kind on the
17 information presented; correct?

18 A That's right. If management assumptions changes, the
19 numbers herein will change.

20 Q Right. Okay. So just so I'm clear, you express no
21 assurance of any kind on the information presented; correct?

22 A That's what the sentence reads.

23 Q If we move to the last sentence, it says, "Accordingly,
24 reliance on this report is prohibited by any third party as
25 the projected financial information contained herein is

1 subject to material change and may not reflect actual
2 results." That statement was correct at the time; correct?
3 A Yes. As assumptions change, the numbers herein will
4 change.

5 Q If we could move to City Exhibit 109, Mr. Malhotra, this
6 is another cash flow forecast; correct?

7 A That is correct.

8 Q And this was prepared on October 3rd, 2013; correct?

9 A Yes.

10 Q And you prepared this document; correct?

11 A Yes, in conjunction with the city's management team, the
12 other advisors and my team.

13 Q And you reviewed this document before it went out;
14 correct?

15 A I did, yes.

16 Q And much like the other cash flow forecasts we've seen,
17 the title here says that it's a work in progress subject to
18 material change; correct?

19 A That is correct. It's subject to the assumptions
20 changing at any point in time.

21 Q Okay. And that was a true statement at the time;
22 correct?

23 A That is correct.

24 Q And if we move down again to the second sentence of the
25 first paragraph, it says, "The information contained herein

1 is not intended to be and should not be relied upon by any
2 third party or as legal, auditing, or accounting advice";
3 correct?

4 A Should not be considered as legal, auditing or accounting
5 advice by any third party. That is correct.

6 Q And it should not be relied upon by any third party;
7 correct?

8 A That's what the sentence reads.

9 Q And that was a true statement at the time; correct?

10 A That is correct.

11 Q And, again, I'll try and speed this up a little bit, but
12 if we look at the second sentence of the first paragraph, you
13 again say that with respect to prospective financial
14 information relative to the client, Ernst & Young did not
15 examine, compile, or apply agreed-upon procedures to such
16 information in accordance with attestation standards
17 established by the AICPA, and E&Y expresses no assurance of
18 any kind on the information presented; correct?

19 A That is correct. We did not perform audit procedures on
20 the data herein as established by the AICPA, and with respect
21 to the assumptions, if they change, the numbers will change,
22 so we cannot provide any assurance that the numbers will not
23 change because if the assumptions change, the numbers will
24 change.

25 Q Right. You couldn't provide any assurance of any kind on

1 the information presented; right?

2 A That is correct. That's what the statement says.

3 Q Finally, if you go to the last sentence, "Reliance on
4 this report is prohibited by any third party as the projected
5 financial information contained herein is subject to material
6 change and may not reflect actual results," that was a true
7 statement; correct?

8 A Yes. As all the assumptions change or any of the
9 assumptions change, the data herein will change.

10 Q If we could go to City Exhibit 110, please. And, again,
11 Mr. Malhotra, this is another cash flow forecast; correct?

12 A That is correct.

13 Q And it was prepared on September 17th, 2013; correct?

14 A Yes.

15 Q And you prepared this document; correct?

16 A Yes, I did, with my team, the other advisors, and the
17 city's management team.

18 Q And you prepared this document before it went out;
19 correct?

20 A I analyzed this document before it went out, yes.

21 Q Okay. And like the other cash flow forecasts we've seen,
22 it states "work in progress subject to material change";
23 correct?

24 A The assumptions are subject to material change. That is
25 correct.

1 Q Okay. But here it says just "work in progress subject to
2 material change"; correct?

3 A That's what it says on that page, yes.

4 Q And that was a true statement at the time; correct?

5 A That is.

6 Q And, again, if we look at the first paragraph, second
7 sentence, you write, "Accordingly, the information contained
8 herein is not intended to be and should not be relied upon by
9 any third party or as legal, auditing, or accounting advice";
10 correct?

11 A That is correct. The assumptions herein are subject to
12 change and should not be relied upon by any third party as
13 stated here.

14 Q Right. It says the information contained herein should
15 not be relied upon by any third party; correct?

16 A That's what the statement reads based on the information
17 we have here, based on the assumptions that are in here, the
18 fact that the assumptions are always subject to change.

19 Q Right. And that was a true statement at the time;
20 correct?

21 A Yes. It's a true statement. The data reflects the
22 assumptions. The document reflects the data based on the
23 assumptions supporting that data. If the assumptions change,
24 the numbers will change as well.

25 Q And if we go down and look at the second sentence in the

1 second paragraph, again, you write, "With respect to
2 prospective financial information relative to the client,
3 Ernst & Young, LLP, did not examine, compile, or apply
4 agreed-upon procedures to such information in accordance with
5 attestation standards established by the AICPA, and E&Y
6 expresses no assurance of any kind on the information
7 presented." That's a true statement; right?

8 A That's right. We did not perform audit procedures.

9 Ernst & Young is a Big Four accounting firm, and this clearly
10 states that we are not providing any audit or assurance-type
11 services for this particular client.

12 Q Right. It says that you don't express any assurance of
13 any kind on the information presented; right?

14 A That is correct. That's what it reads.

15 Q And that was a true statement; right?

16 A Yes.

17 Q Then, finally, if we go to the last sentence, it
18 states -- or you write, "Reliance on this report is
19 prohibited by any third party as the projected financial
20 information contained herein is subject to material change
21 and may not reflect actual results." That was a true
22 statement, too; correct?

23 A That is correct. If the assumptions change, the data
24 herein will change.

25 Q If we could go to City Exhibit 115, please.

1 Mr. Malhotra, this is another cash flow forecast; correct?

2 A That's right. This is the interim forecast.

3 Q And this is from December 9th, 2013; correct?

4 A That is correct.

5 Q So relatively recent. And you prepared this document;
6 correct?

7 A Yes, similar to how I've highlighted earlier.

8 Q Sure. And you reviewed this document before it went out;
9 correct?

10 A This document is still, as I mentioned, an interim draft
11 that has not been approved by the emergency manager yet, but
12 I am -- I have looked at this document and analyzed it before
13 it went out.

14 Q Right. Okay. And, again, if we look at the title, it
15 says, "Work in progress subject to material change"; correct?

16 A Yes. The assumptions are subject to material change.

17 Q If we go to the first paragraph, second sentence, we see
18 the same sentence, "Accordingly, the information contained
19 herein is not intended to be and should not be relied upon by
20 any third party or as legal, auditing, or accounting advice";
21 correct?

22 A That's what it says, yes.

23 Q And that's a true statement; right?

24 A That's what it would have been, yes. It would be a true
25 statement.

1 Q If we again go to the second paragraph, second sentence,
2 it states or you write, "With respect to prospective
3 financial information relative to the client, Ernst & Young
4 did not examine, compile, or apply agreed-upon procedures to
5 such information in accordance with attestation standards
6 established by the AICPA, and E&Y expresses no assurance of
7 any kind on the information presented." That's a true
8 statement; right?

9 A That is correct. We did not perform audit procedures.

10 Q And you express no assurance of any kind on the
11 information presented; right?

12 A The information is based on the assumptions, and we are
13 not providing any assurance on the information presented
14 herein. That is correct.

15 Q Finally, you write, "Reliance on this report is
16 prohibited by any third party as the projected financial
17 information contained herein is subject to material change
18 and may not reflect actual results." That's also a true
19 statement; right?

20 A If the assumptions change, that is correct, the data will
21 change.

22 MR. ARNAULT: If we could turn to City Exhibit 36,
23 please, and if we could actually bring up -- it's the second
24 actual page, but it's not page 2 if that makes sense. That's
25 it. Thank you.

1 THE COURT: This page is not in evidence.

2 MR. ARNAULT: Oh, okay.

3 THE COURT: Do you want to move it into evidence?

4 MR. ARNAULT: No, I do not.

5 BY MR. ARNAULT:

6 Q Then we'll move on to page 97 and 98, which I do believe
7 are in evidence. And, Mr. Malhotra, just a few quick
8 questions about the projections on this page. You stated
9 that you prepared these projections; correct?

10 A That is correct. In conjunction with the other advisors
11 and the management team, we did.

12 Q Right. But the reinvestment expenditures and
13 adjustments, those were actually prepared by Conway
14 MacKenzie; correct?

15 A Some of those line items, correct, not all of them.

16 Q Right, but some of them were prepared by Conway
17 MacKenzie; correct?

18 A Yes.

19 Q Okay. If we could turn now to City Exhibit 111, please,
20 and if we could look at the second page, please. All right.
21 Let's begin by taking a look at scenario number one, please.
22 Scenario one is the scenario where the city obtains DIP
23 financing, makes the swap termination payments, and there is
24 no casino trap; correct?

25 A That is correct.

1 Q And I assume that to build this forecast, you had to bake
2 in certain assumptions; correct?

3 A Yes. The numbers are based on the assumptions, yes.

4 Q For example, you assume that the interest rate on the DIP
5 financing loan would be five percent; correct?

6 A That is correct.

7 Q You are aware, however, that the Barclays DIP is subject
8 to market flex; right?

9 A That is correct.

10 Q And the market flex provision of the Barclays DIP means
11 that the minimum interest rate of the DIP loan could increase
12 to 6.5 percent; correct?

13 A Could you repeat that last question?

14 Q Sure. The market flex provision of the Barclays DIP
15 means that the minimum interest rate of the DIP loan could
16 increase to 6.5 percent; correct?

17 A That is my understanding that it could, but I don't know
18 if that's the minimum floor that's already set --

19 Q Right.

20 A -- at 6.5.

21 Q Sorry. But if exercised, it could increase to a minimum
22 of 6.5 percent; correct?

23 A It could. That is my understanding, yes.

24 Q Yeah. And obviously if the interest rate increases to
25 6.5 percent, that would have an impact on this forecast;

1 correct?

2 A That is correct. The amount of interest would have an
3 impact on the forecast.

4 Q In fact, the projected incremental cash balances
5 illustrated in the exhibit between scenario one and two would
6 actually be narrower; correct?

7 A That is correct.

8 Q In addition to the assumption regarding market flex, this
9 cash balance forecast also includes certain assumptions
10 regarding LIBOR; correct?

11 A I apologize. Can we go back to your previous question
12 with respect to the narrower?

13 Q Sure.

14 A Would you mind asking that question again?

15 Q Yeah, of course. The projected incremental cash balances
16 illustrated in this exhibit would be narrower if the market
17 flex provision was exercised; correct?

18 A Yes. The first line would come down in terms of the
19 amount of available cash flow accounting for that increased
20 interest rate, yes.

21 Q So, in addition to the assumption regarding market flex,
22 this cash balance forecast also includes certain assumptions
23 regarding LIBOR; correct?

24 A Yes.

25 Q And I assume that you've utilized a forward LIBOR curve

1 as part of your assumptions; right?

2 A That would have been the data given to us by the
3 investment banker, Miller Buckfire.

4 Q Okay. And the forward LIBOR curve, that's based on
5 interest rates as of today; right?

6 A That is my assumption, but, like I said, the assumptions
7 on the forward LIBOR assumptions were given to us by Miller
8 Buckfire, so in the assumptions that you see herein, a flat
9 five percent has been used until the default rate of seven
10 percent kicks in.

11 Q Right. So the assumptions on the LIBOR curve, those were
12 provided by Miller Buckfire; correct?

13 A Yes.

14 Q And you didn't independently test those assumptions;
15 right?

16 A That is correct.

17 Q But you would agree with me that the forward LIBOR curve
18 is subject to change; right?

19 A Like any forward curve, it is.

20 Q And it's subject to a number of different factors; right?

21 A I presume so.

22 Q For example, the actions of the Federal Reserve might
23 impact the forward LIBOR curve; right?

24 A I don't know if I can comment on that.

25 Q But you could comment if the interest rates perform

1 differently than the assumptions that Miller Buckfire
2 provided, that would impact the city's projected cash
3 balances; correct?

4 A Yes.

5 Q But you didn't conduct any type of sensitivity analysis
6 regarding the volatility of the LIBOR curve, did you?

7 A No, we did not.

8 Q Finally, interest rates will also have an effect on the
9 cost of the swaps; right?

10 A Could you rephrase what you mean by "cost of the swaps"?

11 Q Well, if interest rates increase over time, that's going
12 to decrease the cost of the swaps; right?

13 A Presumably if you mean the out of the money swap
14 settlement, if the interest rates were to increase, that
15 would have a reduction impact on the out of the money swaps.

16 Q Right. And it's an -- if interest rates rise over time,
17 that would increase the cost of the DIP financing; right?

18 A Yes, compared to what's projected in the forecast within
19 these certain flex terms. If the interest rates do increase
20 compared to what's assumed in here, the cost of the financing
21 would increase.

22 Q Right. So the interest rate -- the rising interest rate
23 would actually have an opposite effect on the cost of the DIP
24 and the cost of the swaps; right?

25 A The take-out value of the swaps is impacted by the

1 interest rate at that point of time; however, depending on if
2 those swaps have already not been terminated prior to
3 whatever theoretical interest rate time frame you're
4 referring to.

5 Q Right. So if they haven't been terminated; right?

6 A If they haven't been settled, yes.

7 Q But you didn't conduct any type of sensitivity analysis
8 that would look at where the cost of the DIP and the cost of
9 the swaps would cross over, did you?

10 A I did not, no.

11 MR. ARNAULT: No further questions, your Honor.

12 MS. ENGLISH: Caroline English for Ambac. I just
13 have maybe two questions is all. Could we bring 111 back up
14 on the screen, please? Flip to the next page.

15 CROSS-EXAMINATION

16 BY MS. ENGLISH:

17 Q Mr. Malhotra, you testified below that those were the
18 three primary options the city was looking at, the scenario
19 one, two, and three; correct?

20 A Those are the three scenarios that are illustrative on
21 this page.

22 Q Okay. And of those three illustrative scenarios,
23 scenario number one is the only one that includes looking at
24 cash flows based on receiving a DIP loan; is that correct?

25 A That is correct.

1 Q And, in fact, sir, isn't it true that when the city was
2 negotiating the forbearance agreement in June of 2013, they
3 never asked Ernst & Young to prepare a cash flow analysis
4 that would look at the cost of funding a litigation with the
5 swap counterparties as opposed to settling with them?

6 A That is correct. I don't recall running a scenario like
7 that.

8 Q I'm sorry. The last part of your answer?

9 A You're correct. I do not recall running a scenario on
10 the litigation costs associated with the swaps transaction.

11 Q And you didn't run a scenario not only looking at
12 litigation costs, but also you didn't run a scenario that
13 looked at the city getting a DIP loan to finance litigation
14 costs; correct?

15 A Can you rephrase that question, please?

16 Q You didn't run any cash flow analysis that looked at the
17 city funding the cost of litigating with the swap
18 counterparties as opposed to settling with them; correct?

19 A I think that's sort of reflective in that scenario three
20 maybe, unless I'm thinking about this wrong, that if you
21 don't have a DIP and you don't have a swap settlement and you
22 potentially have the risk of your casino monies trapped --

23 Q Right. What I'm asking you, though, is at the time the
24 city was negotiating with the swap counterparties this
25 summer, right, did the city ask Ernst & Young to do a cash

1 flow analysis that looked at getting DIP financing and
2 litigating with the swap counterparties instead of settling?

3 A I cannot recall if we ran a scenario in which the city
4 was receiving DIP financing and not settling the swaps
5 because I thought they were intertwined, that the DIP
6 financing was intertwined with the settlement of the swaps.

7 MS. ENGLISH: Okay. Thank you very much.

8 CROSS-EXAMINATION

9 BY MR. MARRIOTT:

10 Q Good morning, Mr. Malhotra.

11 A Good morning.

12 Q Vince Marriott representing EEPK and affiliates.

13 MR. MARRIOTT: Could I have demonstrative 140? Do
14 we have that anywhere?

15 UNIDENTIFIED SPEAKER: What?

16 MR. MARRIOTT: Demonstrative Exhibit 140?

17 UNIDENTIFIED SPEAKER: Oh, 140.

18 BY MR. MARRIOTT:

19 Q Okay. Mr. Malhotra, if I understand the intention of
20 this demonstrative exhibit, it's to demonstrate the cash flow
21 benefits to the city if the swap payments are eliminated and
22 the DIP loan is borrowed; correct?

23 A That is correct.

24 Q Okay. I want to understand a couple of things about this
25 to make sure that we verify the cash flow benefit numbers.

1 The swap termination loan line, you see that? The 7.3
2 million to 13.6 million in fiscal year 2014 and the 7.3
3 million to 13.6 million in fiscal year 2015, are those
4 estimates of the range of interest payments due with respect
5 to the swap termination loan for those two years?

6 A It would be, yes. It's the swap interest. It's the
7 interest payment only on the portion of the DIP financing
8 that would be used to settle the swaps, so it would be the
9 interest on the 227-odd million dollars that would be
10 calculated for fiscal year '14 and '15 and does not include
11 anything else.

12 Q Okay. Now, the range, 7.3 to 13.6, is that designed to
13 reflect the market flex provision and the difference in
14 potential minimum interest rates payable under the swap
15 termination loan?

16 A I would have to check if it includes the maximum flex of,
17 you know, whatever that maximum flex is, but I think this is
18 run at three and a half percent, which is the --

19 Q The minimum.

20 A -- the minimum --

21 Q Right.

22 A -- and I believe the cap was about six or six and a half
23 percent. I would have to -- about six percent.

24 Q So the 13.6 million may or may not reflect maximum flex?

25 A The maximum flex under a default scenario, I do not think

1 it reflects that total.

2 Q Okay. But does it reflect the maximum nondefault flex of
3 a minimum interest rate of 6.5 percent?

4 A I would just have to do a calculation real quick. I
5 think it's a little shy of the six and a half, so I think
6 it's closer to five and a half or six percent based on the
7 numbers I'm seeing here.

8 Q Okay. So the 13.6 million, in fact, if there was maximum
9 flex, could be higher?

10 A It depends actually really on the date you picked with
11 respect to the swap settlement amount in terms of the 227
12 million and the corresponding interest on that, so, yes, you
13 are right. If the interest is higher, that amount would be
14 higher. However, if the overall take-out amount is lower,
15 that amount would be lower, so it is a factor of not only the
16 amount of interest --

17 Q Um-hmm.

18 A -- but also the amount of the swap settlement.

19 Q But you would agree with me -- and let's get to that
20 point. You would agree with me that the city is borrowing
21 more or proposing to borrow more under the post-petition
22 financing than just the swap termination loan. It's also
23 borrowing what it calls the quality of life loan; correct?

24 A Yes.

25 Q Okay. And the total proposed borrowing is 350 million;

1 correct?

2 A That is correct.

3 Q And the city will have an interest cost against the whole
4 350 million, not just the swap termination fees; correct?

5 A Yeah, but now the illustrative on 1 -- on Exhibit 140
6 compares the swap interest to the swap interest. The quality
7 of life loan DIP interest would be in addition to that, but
8 it's sort of not reflected in this net analysis over here.

9 Q Right. It's not -- and I agree. It's not reflected,
10 but, in fact, it will be a cost to the city associated with
11 the proposed transaction; correct?

12 A As the cash flows have shown, the city needs the money,
13 and that requires -- so, yes, it will pay interest on the
14 quality of life loan. That is correct.

15 Q And since the quality of life loan and the swap
16 termination loan are a single \$350 million loan, in fact, the
17 cash flow benefits to the city are diminished not just by the
18 interest payable on the swap termination fees but also by the
19 interest payable on the quality of life piece; correct?

20 A No.

21 Q Why not?

22 A Because you're also ensuring that you have ongoing
23 collection of your casino revenues.

24 Q No. You're not -- let me try to be more clear. As I
25 understand this demonstrative, it's designed to demonstrate

1 in a very limited sense the difference between the swap
2 payments and the cost to the city of the swap termination
3 loan; correct?

4 A That is correct.

5 Q All right. Isn't it also correct, however, that the city
6 is not just borrowing the swap termination loan in connection
7 with the forbearance agreement and termination of the swaps
8 and the post-petition financing? It's also borrowing the
9 quality of life loan such that its total borrowings on which
10 it will pay interest is \$350 million; correct?

11 A That is correct.

12 Q And that total interest cost on \$350 million is not
13 reflected on this demonstrative; correct?

14 A That is correct.

15 Q Now, the city also has to pay a commitment fee with
16 respect to the post-petition financing; correct?

17 A Yes, I believe that is correct.

18 Q And that commitment fee is --

19 MR. STEWART: Your Honor, if I -- may I -- if he
20 wants to go down this road, I suppose maybe that's his
21 decision. I thought his objection when I was examining the
22 witness was that this very area was not relevant and
23 certainly is beyond the scope of direct, but maybe he's going
24 somewhere on that, but wasn't this Mr. Marriott's objection
25 an hour and a half ago?

1 MR. MARRIOTT: It was not, your Honor. This is
2 precisely what -- the limits of what I believe Mr. Malhotra
3 ought to be allowed to testify to, and that is the cash flow
4 benefits to the city, and that beyond that he's gotten into
5 needs and uses and all of that. What I'm attempting to
6 demonstrate here is that this is an overstatement of the cash
7 flow benefits to the city at this --

8 THE COURT: I'll permit that. Go ahead.

9 BY MR. MARRIOTT:

10 Q Back to the commitment fee. You understand that there is
11 a commitment fee payable with respect to the post-petition
12 financing; correct?

13 A Yes. I -- yes.

14 Q And are you aware of the amount of that commitment fee?

15 A I don't recall off the top of my head.

16 Q If I were to tell you it's one and a half percent of \$350
17 million, would that refresh your recollection?

18 A That would sound in the ballpark, yes.

19 Q Okay. You would agree with me that one and a half
20 percent of 350 million is about \$4.3 million?

21 A Sounds right.

22 Q Okay. Is that \$4.3 million reflected anywhere on the
23 comparative -- on the cash flow benefit calculation on this
24 demonstrative?

25 A No, it is not.

1 MR. MARRIOTT: If we could have 111.

2 BY MR. MARRIOTT:

3 Q Just a couple quick questions on this exhibit. You run
4 it out to June 2015; correct?

5 A On this particular chart, yes.

6 Q Right. And it doesn't go out past that; correct?

7 A Not on this chart. That's correct.

8 Q The post-petition financing, the \$350 million, is going
9 to have to be repaid; right?

10 A Yes.

11 Q This does not reflect the cash impact of having to repay
12 the \$350 million post-petition financing facility; correct?

13 A This does not include the impact of repaying \$350
14 million; however, it does include an assumed amortization of
15 \$8 million a month starting in December of 2014, and that
16 would reflect a four-year amortization, so it does not
17 include repaying \$350 million over this time frame.

18 MR. MARRIOTT: Nothing further.

19 CROSS-EXAMINATION

20 BY MR. GOLDBERG:

21 Q Good morning, sir. Jerome Goldberg representing
22 interested party David Sole.

23 MR. GOLDBERG: I was wondering if 140 could be put
24 up again, please.

25 THE COURT: I'm sorry, sir. What number?

1 MR. GOLDBERG: 140.

2 BY MR. GOLDBERG:

3 Q Just so I'm clear, sir, you stated that 140, the swap
4 termination loan reflects the interest on the swap
5 termination loan reflective pre-termination, pre-calling in
6 the loan, pre-default on the loan; is that not correct?

7 A I'm sorry. I didn't understand your question.

8 Q Let's be clear. The city pays an interest rate of three
9 and a half to six and a half percent on the loan until the
10 bankruptcy is over, approximately; is that not correct?

11 A The city's -- on the DIP financing.

12 Q Yes, on the DIP financing.

13 A Yeah. The city is going to pay the -- once the DIP is
14 closed, the interest rate could be as low as three and a half
15 percent or could be as high as six and a half percent.

16 Q And once the bankruptcy is over, then there's an
17 automatic termination event on that loan where the city then
18 begins paying a rate of two percent higher than that and with
19 payments of \$4 million a month for the swap termination fee
20 and \$4 million a month on the quality of life loan; is that
21 not correct?

22 A The \$8 million, which is the four and four that you just
23 referred to, is going to be an all-in number, principal and
24 interest.

25 Q I'm sorry. I couldn't hear you, sir.

1 A The \$8 million is designed to be an all-in payment versus
2 just interest. It's going to be principal and interest
3 combined. The terms of the default rates are two percent
4 higher, and the Miller Buckfire team can talk to this better
5 with respect to exit financing and the assumptions that go
6 with that.

7 Q But the figures you're showing here do not factor that in
8 whatsoever in this chart, do they?

9 A No. These are specifically --

10 Q Okay. That answered that question. Thank you.

11 MR. GOLDBERG: Can I see chart -- have chart 108 put
12 up, please -- I mean Exhibit 108, page 2?

13 BY MR. GOLDBERG:

14 Q I'm looking at the line that says "DIP financing
15 principal interest payments." It would be the third line
16 from -- on top of total reconciling item -- reconciling
17 items.

18 A I'm sorry. Can I see the cover of this packet for a
19 moment so I know which packet this is just -- thank you.

20 Q Now, in --

21 MR. GOLDBERG: Thank you. Very good. I appreciate
22 it. If you can take that line all the way across, that would
23 be very helpful, that line and the line below it.

24 BY MR. GOLDBERG:

25 Q Now, for fiscal year 2015, that reflects payments on the

1 DIP financing of 63.3 million. Is it fair to say that
2 includes a period of time where the payment is just the
3 interest payment and then the full amortization is kicked in?
4 A It's shown on the memo two on that page. 42.4 million of
5 that payment is principal on the second to last line of that
6 page, and 20.8 million is interest.

7 Q Okay. And then for fiscal year 2016, it shows a payment
8 of \$96 million a year; is that not correct?

9 A Including \$76.9 million of principal and \$19.1 million of
10 interest.

11 Q And of that 96 million, 4 million a month is allocated to
12 the swap termination payment; is that not correct?

13 A I do not know specifically if it's four million. The way
14 we have modeled it is a total payment of \$8 million a month.
15 The split of that between the quality of life loan versus the
16 swap is something that Miller Buckfire will have to talk to.

17 Q I'm sorry.

18 A What we have included in the model is \$8 million a
19 month --

20 Q Exactly.

21 A -- with respect to principal and interest. Your question
22 about how much of that is the quality of life loan versus the
23 swap settlement, that's a question for Miller Buckfire.

24 Q Okay. We'll question Mr. Buckfire. I mean you haven't
25 looked at the Barclay loan terms?

1 A Not in detail, no.

2 Q You haven't looked at how the payments get allocated
3 under the Barclay loan terms?

4 A I never -- what we have looked at is the \$8 million a
5 month for principal and interest in aggregate. I have not
6 reviewed the split of that towards the quality of life loan
7 versus the swap settlement amount.

8 Q Okay. Well, I'd be glad to pull it out. If it's helpful
9 to pull it out now, we can pull it out, but I can tell you
10 straight up that it reflects \$4 million a month allocated to
11 the swap termination.

12 THE COURT: I have to ask you just to ask a
13 question, please.

14 MR. GOLDBERG: Okay. Okay.

15 BY MR. GOLDBERG:

16 Q Assuming -- assuming that that loan is split at least
17 until the quality of life payment toward -- \$4 million toward
18 the swap termination and \$4 million to the quality of life,
19 that would mean 48 million is being paid to terminate the
20 swaps; is that not correct?

21 A No. Under that assumption, the 48 million is just a
22 repayment of the loan undertaken to settle the swaps.

23 Q Okay. That's fair enough. And 48 million is a repayment
24 to Barclays for paying -- for repaying the -- for paying
25 the -- for terminating the swaps with UBS and Bank of

1 America; is that not correct? Is that a fair statement?

2 A Why don't you -- please, could you rephrase that
3 question?

4 Q Certainly. The Barclay loan -- the swap termination part
5 of the Barclay loan is to pay off UBS and Bank of America on
6 the swaps; is that not correct?

7 A It's to settle the swaps. That is correct, yes.

8 Q Okay. And so assuming that the 96 million, at least for
9 2016, is split four million a month toward the swap
10 termination loan and \$4 million toward the quality of life
11 loan, four million times 12 is 48 million. That means 48
12 million is dedicated to give to Barclay to pay off the
13 satisfied funds that were paid to UBS and Bank of America?

14 MR. STEWART: Objection, your Honor. He's making
15 assumptions of facts that are not on the record, and I'm not
16 sure he's phrased this in a proper way if what he's doing is
17 asking this opinion for a witness -- of this witness for an
18 opinion based on new hypotheticals.

19 THE COURT: I'll permit it if the witness can
20 answer. Can you answer that question, sir?

21 THE WITNESS: Under the assumptions that you're
22 highlighting of \$4 million a month, if you say \$4 million a
23 month is going towards swap settlement over 12 months, that
24 could equate to 48 million bucks -- \$48 million. That's just
25 the math that I would -- I can talk about the 12 times 4, but

1 anything beyond that I would not be comfortable talking
2 about.

3 BY MR. GOLDBERG:

4 Q No problem. So would you agree with me then that the
5 figure there when you say swap payment savings from the
6 settlement is deceptive in that, in fact, \$48 million is
7 being used to pay off the swaps, so the actual savings,
8 according to you, would be \$2.6 million.

9 A No.

10 Q Okay. And, in fact, the \$50.6 million, as has been
11 stated previously, is based on a projection of the current
12 LIBOR rate, which is very low; correct?

13 A No. That is a fixed payment.

14 Q The 50.6 million is based on a fixed payment?

15 A Yeah. It's the \$4.2 million a month that the city has
16 contracted to pay on its swap interest.

17 Q But isn't that based on the -- a margin of -- between
18 the -- 3.34 margin plus LIBOR and the fixed -- and the fixed
19 interest rate that's paid to the banks?

20 A I would have to go back and check.

21 Q Okay. No problem. You're not the one who calculated the
22 termination fees. You said Mr. Buckfire was involved in
23 that?

24 A I did not calculate the termination fee.

25 Q And you're not familiar with how that's done?

1 A The swap settlement fee?

2 Q Yes.

3 A I have a general understanding, but I have not been
4 involved in calculating the fee.

5 MR. GOLDBERG: Okay. I have no further questions.
6 Thank you.

7 THE COURT: Any other questions for the witness?
8 Any redirect?

9 MR. STEWART: Just a few, if I might.

10 REDIRECT EXAMINATION

11 BY MR. STEWART:

12 Q Mr. Malhotra, you were asked about market flex.

13 A Yes.

14 Q Isn't it the case that 6.5 percent is not the minimum,
15 it's the maximum?

16 A Yes.

17 MR. STEWART: Let's put up Exhibit 106, just the
18 first page.

19 BY MR. STEWART:

20 Q You remember you were asked about some of the disclaimer
21 language that appears on the first page of this exhibit and
22 other exhibits?

23 A Yes.

24 Q Does the term "assurance" have a particular meaning
25 within the auditing profession?

1 A Yes, it does.

2 Q What is that particular meaning?

3 A It's supposed to relate to audit-type opinions, audit-
4 related specific work as under the guidelines of the AICPA.

5 Q So when there's reference here to assurance of any kind,
6 that's a reference to auditing assurance?

7 A Yes. We are not providing auditing assurance here.

8 Q Also, there were references here to third parties, about
9 reliance by third parties. Remember those questions?

10 A Yes.

11 Q Okay. Who's your client in your work for the city?

12 A The City of Detroit.

13 Q You're the first party because you're doing the work;
14 right?

15 A That is correct.

16 Q The second party is the city; correct?

17 A Yes.

18 Q Who's the third party?

19 A I don't know.

20 Q By this disclaimer, was E&Y suggesting that the city
21 could not rely upon its work?

22 A No. The city could.

23 Q Now, the work -- you've described how you went about it.
24 Does this --

25 THE COURT: Excuse me. Am I a third party?

1 THE WITNESS: Your Honor, I don't know.

2 BY MR. STEWART:

3 Q And in preparing your forecasts, did you believe them to
4 be as accurate as you can make them?

5 A Yes.

6 MR. STEWART: Thank you. That's all I have.

7 THE COURT: Any other questions of the witness? One
8 second, please. Could somebody please put Exhibit 108 back
9 up at whatever page it was that Mr. Goldberg was asking
10 about? Thank you. You see the line in the middle that says
11 "net cash flow per DIP financing scenario"?

12 THE WITNESS: Yes, your Honor.

13 THE COURT: And then there are the four numbers for
14 the fiscal years '14 through '17?

15 THE WITNESS: Yes, your Honor.

16 THE COURT: Can you explain to the Court what those
17 four numbers mean?

18 THE WITNESS: Yes, your Honor. It would mean that
19 in fiscal year 2014, if the city had completed the DIP
20 financing and settled the swaps, the city would have \$87.6
21 million of cash generated in that particular fiscal year. In
22 year -- fiscal year 2015, there would be \$62.9 million of
23 cash used that year of which, your Honor, \$42.4 million would
24 be a repayment of principal under the current assumptions
25 that we are using. In years -- fiscal year 2016, the net

1 cash flow would be \$6.6 million generated for the city under
2 the assumption that \$76.9 million of principal would be
3 repaid in that particular year subject to the ongoing
4 discussions, and the fiscal year 2017, your Honor, would show
5 a use of \$17 million of cash under the scenario that \$82.5
6 million of principal was repaid in that particular year.

7 THE COURT: Can we have a look, please, at Exhibit
8 111, the chart? Is this a representation of the projected
9 cash balances in these three scenarios taking into account
10 the city's revenue and expenses?

11 THE WITNESS: Yes, your Honor.

12 THE COURT: Did you prepare projected cash balances
13 for these three scenarios beyond June of '15?

14 THE WITNESS: On a monthly basis, your Honor, we did
15 it through June 2015. We did do it for fiscal year '16 and
16 '17 on an annual basis.

17 THE COURT: What does scenario one look like for
18 those two subsequent years?

19 THE WITNESS: Under these assumptions, assuming that
20 the cash flows and the cash balances assumptions with respect
21 to the exit financing are similar to those shown in the
22 previous exhibit, those numbers would get added upon to this
23 cash balance, so I would just have to do the math, your
24 Honor, with respect to the cash flow for fiscal year '16 and
25 fiscal year '17 cumulatively would get added onto that \$61

1 million ending cash balance.

2 THE COURT: What's the number for '16?

3 THE WITNESS: For fiscal year '16, your Honor, the
4 net cash flow is \$6.6 million positive, so it would become
5 \$67 million of ending cash balance.

6 THE COURT: And for '17?

7 THE WITNESS: For '17 it would be a negative \$17
8 million, so it would be an ending cash number of \$50 million.

9 THE COURT: Thank you. Were you involved -- may I
10 have your attention, sir? Were you involved in preparing --
11 were you asked to prepare projections in connection with the
12 city's decision as to how much money to borrow?

13 THE WITNESS: No.

14 THE COURT: Were you asked to prepare projections in
15 connection with the city's negotiations over how much money
16 to pay to terminate the swaps?

17 THE WITNESS: No, your Honor.

18 THE COURT: In a general sense, what would the line
19 for scenario one look like if instead of paying whatever the
20 current amount is to terminate the swaps -- what is that
21 amount, approximately?

22 THE WITNESS: Your Honor, I believe it's about
23 approximately \$227 million.

24 THE COURT: 227. All right. If instead of paying
25 that, what would line 1 look like, for example, if the city

1 had negotiated a number, say, 150 million?

2 THE WITNESS: Your Honor, it would have no impact on
3 line 1.

4 THE COURT: Assuming the same DIP loan amount?

5 THE WITNESS: Assuming the same DIP loan amount,
6 yes, your Honor, and assuming the amortization remains the
7 same in the latter half of this forecast period, but it would
8 not change that amount assuming the DIP loan was the same.

9 THE COURT: Where would that extra \$77 million go?

10 THE WITNESS: Your Honor, assuming the DIP amount
11 was the same, the city would have additional cash if the swap
12 settlement amount was then lower if -- assuming the 350
13 million is still the same, and actually the city can get --
14 instead of the net \$120 million quality of life loan, the
15 city can actually expand that to 197. Only under that
16 scenario would the cash be higher as that \$350 million is the
17 key number that drives the scenario one way or the other,
18 your Honor.

19 THE COURT: I don't have any further questions.

20 Anything further for the witness?

21 MR. STEWART: Only this, Judge. I think the
22 witness' response to your questions about the future --

23 THE COURT: I'm sorry. I do need to ask you to
24 stand by a microphone.

25 MR. STEWART: I'm sorry, Judge. When you had asked

1 the witness about the forecast for fiscal 2016 and 2017 and
2 he was responding to you, he was looking at page 5 of 17 of
3 Exhibit 108.

4 THE COURT: All right. Is that right, sir?

5 THE WITNESS: Yes. That page will reflect the cash
6 balances for --

7 THE COURT: Okay.

8 THE WITNESS: -- fiscal year '16 and '17.

9 THE COURT: Thank you for clarifying that. All
10 right. If there's nothing further for the witness, we will
11 break for lunch now and reconvene at two o'clock, please.

12 THE CLERK: All rise. Court is in recess.

13 (Recess at 12:18 p.m., until 2:00 p.m.)

14 THE CLERK: All rise. Court is in session. Please
15 be seated. Recalling Case Number 13-53846, City of Detroit,
16 Michigan.

17 THE COURT: Before we proceed, we have been asked to
18 provide a little service for Judge Cleland of the District
19 Court, so we need to go off the record, please.

20 (Recess at 2:00 p.m., until 2:02 p.m.)

21 THE COURT: All right. Back on the record, please.

22 THE CLERK: Recalling Case Number 13-53846, City of
23 Detroit, Michigan.

24 THE COURT: Your next witness, please.

25 MR. LEMKE: If your Honor please, I'm David Lemke on

1 behalf of U.S. Bank as trustee for the water and sewer bonds,
2 and counsel have agreed, if your Honor will permit, to let me
3 make a short announcement regarding an objection so that I
4 might be able to be excused.

5 THE COURT: Yes, sir. Go ahead.

6 MR. LEMKE: The trustee filed a limited objection to
7 the post-petition financing motion. We have resolved that
8 objection with agreeable language with both the city and with
9 Barclays. That language is found in paragraph 6(b) of the
10 proposed order. The version that has been filed with your
11 Honor has the correct language with one exception. There is
12 an "of" that's an extra "of" that's going to be deleted in
13 the first sentence. It's the middle "of."

14 THE COURT: Okay.

15 MR. LEMKE: And with that change then, that -- the
16 language in the order then does resolve the trustee's limited
17 objection to the financing motion, and with your Honor's
18 permission I may stick around for the rest of the day, but if
19 you'll permit, I will excuse myself at the end of the day.

20 THE COURT: Yes, sir.

21 MR. LEMKE: Okay. Thank you, your Honor.

22 MR. CULLEN: Your Honor, the city -- good afternoon,
23 your Honor. Thomas Cullen of Jones Day for the city. The
24 city would now like to call Kenneth Buckfire as our next
25 witness.

THE COURT: Okay. One second. For your information, the city has 317 minutes left and the objectors 431. Please raise your right hand.

4 KENNETH BUCKFIRE, DEBTOR'S WITNESS, SWORN

5 THE COURT: All right. Please sit down.

6 DIRECT EXAMINATION

7 | BY MR. CULLEN:

8 Q Good afternoon, Mr. Buckfire.

9 A Good afternoon.

10 Q Could you please provide your full name for the record,
11 sir?

12 A Kenneth Buckfire.

13 Q And where do you reside?

14 A New York City.

15 Q And what's your job?

16 A I am the co-president of Miller Buckfire & Company, an
17 investment banking firm.

18 Q And what is the nature of Miller Buckfire's business?

19 A We advise companies, countries, and municipalities in
20 financial distress

21 Q And could you describe your professional background
22 before you came to Miller Buckfire?

23 A After receiving my MBA from Columbia University in 1987,
24 I went to work as an investment banker specializing in
25 restructuring. I was with Lehman Brothers in the early part

1 of my career. After leaving Lehman Brothers, I joined
2 Wasserstein Perella to start their financial restructuring
3 practice, which we did successfully. In 2002 my then
4 partner, Henry Miller, and I bought our business from the
5 successor to Wasserstein Perella and formed Miller Buckfire &
6 Company.

7 Q As an investment banker working in the restructuring
8 area, have you had occasion to work on issues regarding
9 restructuring finance?

10 A Yes.

11 Q Could you describe what restructuring finance entails for
12 the Court, please?

13 A Restructuring finance entails raising capital for
14 companies or cities from time to time or countries either in
15 or out of court under conditions where the normal capital
16 markets are simply not available, and that requires a much
17 more tailored and more diagnostic approach to raising capital
18 and particularly if it's in bankruptcy because the conditions
19 of bankruptcy pose an additional burden on the entities
20 issuing capital.

21 Q When you say "the normal markets are not available," why
22 not, sir?

23 A Typically an enterprise which -- by this I mean also a
24 country or a municipality which has financial issues is not
25 able to issue debt in the ordinary course or equity in the

1 ordinary course. There are issues about financial
2 statements, issues about solvency, issues about going
3 concerns, sustainability, and the normal providers of capital
4 are not usually willing to provide capital in the
5 circumstances.

6 Q How often does an issue of restructuring finance come up
7 in the course of Miller Buckfire's engagements?

8 A In every engagement, that's a central element.

9 Q And have you ever been qualified as an expert to testify
10 in the area of restructuring finance?

11 A Yes, many times.

12 Q Directionally how many?

13 A Over 20.

14 Q And in particular, have you been ever qualified as an
15 expert to testify concerning debtor in possession financing?

16 A Yes, many times.

17 Q You have experience and expertise in analyzing a
18 distressed entity's liquidity needs?

19 A Yes.

20 Q Do these areas of expertise extend to companies on the
21 brink, if you will, or threatened by bankruptcy as well as
22 those that have declared?

23 A Yes.

24 Q Do you have any experience with municipal restructuring?

25 A Yes.

1 Q Could you explain that for me, please?

2 A My firm did some pro bono work for Harrisburg,
3 Pennsylvania. We are currently advising a bond insurer in
4 the case of Stockton, California. We're also advising a bond
5 insurer with respect to Harris County Sports Authority in
6 Texas. I've also had substantial governmental experience
7 advising both the federal government and a sovereign country
8 on their issues.

9 Q Since you became engaged by the city early in this year,
10 how much time have you spent familiarizing yourself with the
11 city's financial needs?

12 A Substantial time.

13 Q Give me a ballpark.

14 A Well, personally I probably have spent 75 percent of my
15 time related strictly to the City of Detroit as well as the
16 efforts of my banking team. We've been very heavily engaged
17 even predating this current engagement in January. We were
18 first hired to do a 60-day review of the city's financial
19 condition in 2012. We were reengaged in January of this year
20 to be a general financial advisor, and in the construct of
21 those two engagements we became very familiar with the city's
22 financial condition.

23 Q And in the course of this -- these engagements, did you
24 have access to the city's books and records?

25 A We did.

1 Q And did you have access to the assistance of other
2 professionals?

3 A Yes. We had substantial interaction with not only the
4 other outside professionals, Ernst & Young and Conway
5 MacKenzie, but also the city's own finance team.

6 Q Soon after your engagement, did you become familiar with
7 issues regarding something which -- some things which have
8 been called in the course of this case the COP's and the
9 swaps?

10 A Yes.

11 Q Did you have an opportunity to --

12 MR. CULLEN: Oh, before we start getting any
13 further, I'd like to offer Mr. Buckfire as an expert in the
14 area of restructuring finance.

15 MR. HACKNEY: Your Honor, we do object to that. I
16 believe there's going to be opinion testimony that's more
17 specific than the general area of restructuring finance, and
18 we do have objections to his qualifications.

19 THE COURT: What is your objection?

20 MR. HACKNEY: Our objection, your Honor, is that the
21 witness is not qualified as an expert in sourcing municipal
22 finance and has never done it before.

23 THE COURT: Is that true, sir?

24 THE WITNESS: My expertise is in the origin of DIP
25 financing for corporations. This is the first municipal DIP

1 financing we have arranged.

2 THE COURT: What is your assessment on whether the
3 expertise in corporate DIP finance applies to municipal DIP
4 finance?

5 THE WITNESS: Well, I think it's highly relevant,
6 your Honor, because the sources of capital who could provide
7 this kind of financing are very limited. There are people
8 who have DIP financing expertise as well as municipal
9 financing expertise. People who only have municipal
10 financing expertise were not able to assess a DIP financing
11 in this area, so we needed to find people who had both. And,
12 of course, we know all the sources of DIP financing, and so
13 our expertise was directly applicable to running that process
14 for the city. The fact that we only had available to act as
15 collateral revenues of the city was the only aspect of
16 municipal finance that was relevant here, but, of course, we
17 dealt with that through the financing process itself. And
18 this, by the way, I think is the only municipal DIP financing
19 ever done.

20 THE COURT: All right. The objection is overruled.
21 The Court will permit the testimony.

22 MR. CULLEN: Thank you, your Honor.

23 BY MR. CULLEN:

24 Q With respect to the COP's and the swaps, did you form an
25 opinion of their importance to the city's financial

1 situation?

2 A I did.

3 Q What was that opinion?

4 A When we were reengaged in January of this year, we began
5 to do an assessment of the financial risks the city faced in
6 order to formulate our strategy in resolving the city's
7 financial condition. It was at the time evident to us that
8 the default the city already was burdened by under the swaps
9 agreement was a source of financial risk, so we began to
10 study that whole issue with the perspective of eliminating
11 that risk factor from the city's ability to access its cash.

12 Q Can you describe how the swap transactions worked at the
13 time you became aware of them?

14 A Well, the original swap transactions, of course, were
15 entered into by the city in 2006. They were modified in
16 2009, and at that time the swap counterparties were granted a
17 collateral interest in the gaming revenue. They were granted
18 additional events of default, and they also secured an
19 increase in interest rate effectively leaving the city on the
20 hook for net 45 million or so of cash costs every year while
21 the swaps were in place, but, as I mentioned earlier, not
22 only was it a huge cash burden on the city to keep them in
23 place, but because of the defaults that existed in January,
24 it created a risk that at any time the banks might take
25 advantage of their rights under the agreements and foreclose

1 the city's access to gaming revenue.

2 Q Let's go back to the 2009 amendment for a moment. What
3 impact did that amendment have on the hedging function of the
4 swaps?

5 MR. HACKNEY: And, your Honor, I would interpose an
6 objection. I think it's fair to ask the negotiator what he
7 understood to be the case, but to actually ask him the truth
8 of the matter would render a legal conclusion out of a
9 witness that is not an attorney, so I would with that caveat
10 make the objection.

11 BY MR. CULLEN:

12 Q What was your understanding?

13 A My understanding was as part of that 2009 amendment, the
14 city lost all benefits of the swap. The swap was intended to
15 protect the city from a rise in interest rates above the base
16 rate, which in this case was around six percent, but the city
17 gave up that right to the banks. The banks acquired what's
18 called an optional termination right, which meant that if the
19 swap ever went in the money for the city and out of the money
20 for the banks, the banks could terminate, so it was
21 effectively a one-sided arrangement only to the benefit of
22 the banks.

23 Q And with respect to the other impacts of the 2009
24 amendment, what is your understanding of how the pledge of
25 the casino revenues worked?

1 A Well, the arrangement that the city agreed to in 2009
2 required the providers of gaming tax revenues, the casinos
3 themselves, to transmit their gaming tax revenues into a lock
4 box under the control of U.S. Bank as trustee -- or
5 custodian, rather. Excuse me. And only after the account
6 was filled up to a certain amount would the custodian
7 disburse funds to the city after paying, in fact, the banks
8 what they were owed.

9 Q And did that arrangement for the gathering and
10 distribution of these funds pose any risks for the city?

11 A It posed substantial risks.

12 Q Could you explain, please?

13 A Well, because of the defaults that the city had incurred
14 in the beginning of this year and before this, the swap
15 counterparties at any time theoretically had the right to
16 instruct the custodian to stop distributing the city's share
17 of gaming revenues to the city's general fund, which would
18 have been approximately \$120 million a year net of the cost
19 of the swap itself.

20 Q When was the decision made to enter into negotiations
21 with the swap counterparties for what became the forbearance
22 agreement, which is at issue here?

23 A Well, beginning in January when we became the financial
24 advisor to the city, we began to study this issue. There had
25 been attempts made by the banks to enter into a new amendment

1 with the city where the city would, you know, cure, quote,
2 the defaults but give up certain other rights, so we
3 basically tried to downplay those. We didn't think those
4 were in the city's best interest, but in May of this year
5 when we finally saw the real cash flow numbers that we were
6 working with, we were very concerned that come June the city
7 would run out of money. And we were concerned that if that
8 was the case, then the ability of the city to survive if the
9 gaming revenues were lost would be cataclysmic, and in May we
10 decided we had to begin a discussion with the banks.

11 Q Can you describe the degree of urgency with respect to
12 these negotiations that the May numbers caused?

13 A Well, after reviewing the financial forecasts with the
14 emergency manager and others, I was directed to immediately
15 begin negotiations with the banks to try to reach some kind
16 of a standstill or forbearance that would stabilize the
17 city's access to its revenues, so on June 4th or thereabouts
18 I had the first meeting with the banks here, Bank of America
19 Merrill Lynch and UBS, to begin that negotiation.

20 Q When you entered these negotiations, was it with the
21 advice, guidance, collaboration of the emergency manager?

22 A Well, he was certainly involved in overseeing the
23 process, but I was the lead negotiator for the city and
24 obviously assisted by counsel at Jones Day and Pepper
25 Hamilton.

1 Q What did you want to accomplish in these negotiations?

2 A Well, we wanted to accomplish two things. First, we
3 wanted to preserve the city's access to cash flow. We
4 couldn't afford the loss of that much cash from the budget.
5 And we also wanted to, if we could, find a way to get rid of
6 the swaps altogether and eliminate them from being considered
7 as part of our overall restructuring plan.

8 Q And why did you want to get rid of them altogether?

9 A Well, they were a very high cost financing for the city.
10 One could argue that with a \$45 million, you know, annual
11 cash cost and a, you know, termination value of anywhere
12 around \$300 million, it was the highest cost capital the city
13 had incurred. Secondly, by freeing up the gaming tax
14 revenues altogether, that would be made available for the
15 benefit of all the city's creditors, not just the secured
16 parties here.

17 Q Can you give the Court some sense of the atmosphere, the
18 progress of these negotiations?

19 A I would say it was one of the most difficult negotiations
20 I've ever had to conduct.

21 Q Why?

22 A Well, we had extraordinary time pressure, for number one.
23 We knew that the city's cash position was dire. There was a
24 strong possibility that the city would decide not to make the
25 June 15th payment to the COP's holders because it would have

1 no cash, and I was very worried that if we did not have an
2 agreement with the two swap counterparties in place by the
3 time that decision might be taken, they would finally lose
4 their patience and exercise their remedies to protect their
5 own economic position. At that point, we had at least three
6 defaults under the swap agreement. They had not exercised
7 any of their remedies. We were paying them current, but if
8 they knew the city had no more money, I didn't know how long
9 their benevolence or their patience would last, and they
10 might feel they had no choice but to block all of our access
11 to gaming revenues.

12 Q You said it was difficult because -- you've talked about
13 the time and cash flow issues. Other things that made it
14 difficult?

15 A Well, we didn't have a very strong negotiating position.
16 They had a security interest in our gaming revenues. The
17 city had agreed to it in 2009. We only had 11 days to try to
18 get to an agreement in principle before the time when the
19 emergency manager might have to make another fairly dramatic
20 decision. That didn't leave us much to work with, and we
21 didn't really have any good way of preserving our access to
22 gaming revenues without their consent.

23 Q Who were the actual people that you negotiated with?

24 A Well, primarily it was negotiated with UBS and BAML,
25 their business people.

1 Q And what people? At what level in these organizations?

2 A Managing directors.

3 Q And did they have the authority to settle?

4 A They represented that they did.

5 THE COURT: What were their names?

6 THE WITNESS: Jim Nacos from Bank of America Merrill
7 Lynch, and William Chandler from UBS.

8 BY MR. CULLEN:

9 Q And with respect to the amount of the discount which has
10 been discussed in this case, where did the negotiations go on
11 that number?

12 A Well, that's what made this negotiation so different. I
13 didn't have very good cards to play, and we also had no time,
14 so I had to take a fairly aggressive position against the
15 banks by letting them know that we thought the entire
16 transaction, the COP's and the swaps, was very questionable
17 and that if they were forcing us to litigate, we thought we
18 had a really good case, but, frankly, I was taking that
19 position from a negotiating position, not making a legal
20 conclusion, and I basically took the position that we thought
21 that it could happen one of two ways. If we litigated and we
22 were right, they would get nothing for their secured
23 position, zero, but if they were right, they'd get all of it
24 a hundred percent on the dollar. And at that time, we
25 thought the value of the swap was \$400 million. It's a very

1 large number. So we started the negotiation kind of with
2 that background, and I basically said that --

3 THE COURT: Where would they get \$400 million from?

4 THE WITNESS: Good question. They would get it from
5 the gaming revenues, your Honor. They would use their rights
6 to block the gaming revenues, and they would have the right
7 to direct all that gaming revenue to pay themselves back.

8 BY MR. CULLEN:

9 Q Was that related --

10 THE COURT: How long would that take?

11 THE WITNESS: Well, we have about \$170 of gaming
12 revenues. Allowing for interest on the 400 million, four
13 years give or take. Remember, at the time we were
14 negotiating this, interest rates were lower, and, therefore,
15 the swap termination cost was greater. Today it's a lot less
16 because rates have moved up.

17 BY MR. CULLEN:

18 Q So with that backdrop, what was the first number that you
19 came up with? What was the first number that they came up
20 with?

21 A Well, we struggled to find an analytical basis for
22 settlement. We couldn't because there's no good way of doing
23 it, so we basically took the position that if it was binary,
24 zero or a hundred, we'd start at 50 cents on the dollar.

25 Q And how did that work for us?

1 A Well, they were very upset at such a low offer. They
2 thought that it was aggressive, that it was not giving due
3 credit for their collateral position, and then they responded
4 by asking for, I believe, 89. And we went through this
5 negotiation for literally nine or ten days and finally
6 arrived at a compromise where we had the low ending 75, which
7 had no other rationale except it was between 50 and 100, and
8 then we agreed on a scale of option prices that would
9 increase. That would give us -- if it took too long to buy
10 back their option, the price would go up, so we both kind of
11 got what we wanted. At the time, they did not believe, I
12 don't think, that we would ever find the financing to take
13 advantage of the option.

14 Q Now, you say that there was a scale and a time period for
15 different gradations in the discount based on how long it
16 took to pay the swaps off. Why?

17 A It was just part of the negotiation. We negotiated this
18 in June. I believe we originally said it would be 75, and we
19 had until -- I think it was August, and then it would go up
20 the end of September. December to the end of March would be
21 at the high price. It was just a way of cutting a deal.

22 Q And with respect to litigation as a financial option for
23 the city, how did you assess that?

24 A Well, our first objective was to make sure the city had
25 unimpeded access to the gaming revenues. I, as a business

1 matter, could not afford to recommend to the emergency
2 manager we take the risk that litigation would be our way of
3 securing our access to gaming revenues because, in fact, they
4 had secured rights. There was a lock box arrangement. Even
5 if we were right in the end, it might take months, if not
6 years, to resolve who had control of the gaming revenues, and
7 by that time the city would be dead. It was not a risk worth
8 taking.

9 Q Were there other financial alternatives that you
10 identified at the time you were doing this negotiation,
11 financial alternatives to the forbearance agreement?

12 A Well, we reviewed everything that one could logically
13 consider, novation, finding a new swap party, raising enough
14 cash to pay off the swap pursuant to its terms, but we didn't
15 have any time to do it, and, in fact, I don't believe that
16 anybody in the marketplace would have provided the funds for
17 us to do that given the fact that on June 15th we announced
18 we weren't making the COP's payment, and we were, therefore,
19 in default across our entire capital structure.

20 Q You say that it was your inference that the swap parties
21 didn't think that you could get financing to take them out.
22 What was the basis for your confidence that you could?

23 A Well, we've done financings for distressed companies and
24 now cities for many years. We knew the marketplace extremely
25 well. We believed that we could construct a financing

1 package that would attract interest in the marketplace. And
2 having done this for 27 years, I felt confident in
3 recommending this course to our client.

4 Q Can you describe in summary the exchange of consideration
5 under the forbearance agreement?

6 A Well, the city would -- in exchange for the banks
7 terminating -- exercising their right to terminate, would
8 agree to pay off that swap at a significant discount. That
9 would realize, rough numbers today, about \$75 million of
10 value for the city, which would actually reduce secured
11 claims and increase potential recoveries for all of our other
12 creditors, which is obviously an important issue for us;
13 secondly, would allow the city to have unencumbered access to
14 its gaming revenues, which would allow the rehabilitation and
15 payment of debt service to go forward unimpeded by litigation
16 risk. Thirdly, it would clear up a major source of
17 controversy in the case and eliminate litigation.

18 Q In terms of the trapping of this cash during that period,
19 was there any threats? Did anything come up that intensified
20 your concern about that?

21 A Yes. Immediately after the June 15th meeting, we were --
22 my understanding, some of the bond insurers actually put in
23 actions to block our access to gaming revenues. They
24 instructed U.S. Bank to not distribute our share of the
25 gaming revenues to the city alleging that they had rights

1 that we were not allowed to overcome, and that made my
2 concern even greater because clearly we could not risk losing
3 even two weeks of cash. We had no money. We had no other
4 source of funding, and that only made this a higher priority
5 for us.

6 Q At the time you entered into this deal, the forbearance
7 agreement, was it the best deal you could make?

8 A In my judgment it was. Otherwise I wouldn't have
9 recommended it.

10 Q Did you feel that there might be another round of bidding
11 or trading on this issue after you entered into the deal?

12 A I did. I really expected after we ended up filing for
13 bankruptcy that the creditors for whom this deal is a direct
14 benefit would find a reason to come back in and ask for a
15 better price, and it just has never happened.

16 Q Now, have you addressed the issue -- had you addressed
17 the issue of why not waiting a certain amount of time to
18 consummate this deal, to take out the swap counterparties?

19 A Well, time is not the city's friend. We need to file our
20 plan. We need to begin the reinvestment program. We need
21 access to cash. We need stability. This has to get resolved
22 sooner rather than later, and, frankly, the other reason is
23 interest rates, frankly, have been in our favor. Now, we've
24 gotten a lot of benefit from the rise in interest rates
25 because it's reduced the total cost of taking out the swap.

1 Q Explain how that works if you would, sir.

2 A The present value of the swap termination is directly
3 tied to the future interest rate curve. In the last few
4 months, future interest rate curve has risen from where it
5 was in March of this year, which is close to an all time low.
6 That's why the termination cost to swap has been reduced from
7 about \$400 million to around 270 million as we sit here
8 today. No guarantee that that could not reverse, and,
9 therefore, to take advantage of this discount today and take
10 out the swap at what may well be a relatively low point is a
11 great value to the city.

12 Q Can you suggest for the Court under today's circumstances
13 what is the value of the discount if the swaps are taken out
14 before the discount goes down?

15 A Well, goes up.

16 Q Well, let me ask that question again. We're all
17 embarrassed for me. That was a terrible question. If we
18 take out the swaps before the end of the year, what's the
19 value of the discount?

20 A The city would be able to take out the swap at a price of
21 75 cents. That means for a termination cost of \$270 million
22 the city would realize a, you know, discount of about \$68
23 million.

24 Q And if we go past that trip date, what would the discount
25 be worth?

1 A Well, the price would go to 82 on January 1, and that
2 would mean the city would lose \$19 million of that discount.

3 Q How do you plan to finance -- how did you always plan to
4 finance the take-out of the swap counterparties?

5 A Through a post-petition financing facility.

6 Q And what was your involvement in deciding to and then
7 seeking that post-petition financing?

8 A Well, I played a supervisory role in this process, but I
9 did make the recommendation to the emergency manager that
10 this would be the best way to take advantage of the discount
11 and provide additional capital to the city.

12 Q Did you have any role in the sizing of the loan?

13 A Yes.

14 Q What was your role?

15 A Well, raising capital for an entity is always a multi-
16 factor analysis. There's no one thing you look at and decide
17 how much to raise. You don't want to over-borrow because
18 it's expensive, and you don't want more cash than you need.
19 You don't want to under-borrow because you might need the
20 money. In this case, we had to consider the cost of taking
21 out the swap. We had to consider the fact that we only had
22 so much collateral to go around, which is a limiting factor
23 as well. We also had to consider, most importantly, the depth
24 of the market for this kind of financing. This has never
25 been done before. No one has ever done a post-petition

1 financing for a municipality, so it's new and different. We
2 didn't want to have to raise so much money that there would
3 not be enough depth of the market to take it. And lastly, of
4 course, we had to consider the fact that the city itself
5 needed cash to stabilize its balance sheet and allow it to
6 reinvest. That led us to the conclusion that around \$350
7 million was the right number. Rough numbers, about 120
8 million would stay with the city as cash, so the net debt
9 number we're talking about here is not that much different
10 from the amount of the swap cost being taken out.

11 Q And when you say the depth of the market, what does that
12 mean?

13 A Well, normally when you're raising a debtor in possession
14 financing in today's world, there are dozens if not hundreds
15 of people that are willing to provide debtor in possession
16 financing for small and large cases. In this case, however,
17 there were two important requirements a lender would have to
18 consider. One, you've got to be a qualified DIP lender.
19 You've done it before. You understand the logistics,
20 understand how to do it. And, secondly, you have to have
21 experience in municipal finance. That automatically knocks
22 out most of the what I would call nonbank providers of DIP
23 loans. That means you're talking to people who are
24 effectively banks or investment banks with both capabilities.
25 There are not very many of those.

1 Q And when you say "not very many," can you give me a sense
2 of the size of the universe?

3 A Well, we went out to 50 parties, which included nonbanks,
4 of course. We ended up with proposals from over a dozen, and
5 we ended up with proposals from four, two of which were real
6 banks.

7 Q And you had debt to the swap counterparties. You're
8 going to have debt to the post-petition financier. What's
9 the difference? Debt debt?

10 A I have a lot less debt this way.

11 Q How does that work?

12 A Well, the city has a right to terminate these swaps at a
13 value of \$270 million. That's the value today. But we have
14 a right to repay that debt for less than \$200 million, so
15 it's a net savings to the city of \$70 million, which comes
16 ahead of the unsecured parties, which is, therefore, a net
17 benefit to them.

18 Q What impact does the forbearance agreement and the post-
19 petition financing have on the other creditors of the city?

20 MR. HACKNEY: Your Honor, I would interpose an
21 objection on this front. I think we're now crossing over
22 into the needs and uses debate that I thought we had agreed
23 we would not have a mini trial on Friday. I think the
24 witness has testified with respect to his view of the benefit
25 of the forbearance agreement, is talking about the value of

1 the DIP and that front, but to go past that into the best
2 interest of creditors by reference to who's going to get what
3 and why it would be better I think is right into the mini
4 trial of how the money is anticipated to be used and what its
5 anticipated benefit will be.

6 MR. CULLEN: I'm asking, your Honor, only in terms
7 of the financial structure of the city as a debtor at Point A
8 and their financial structure as a debtor at Point B. It's a
9 strictly financial structure kind of question.

10 THE COURT: Why don't you rephrase the question?

11 MR. CULLEN: Pardon me?

12 THE COURT: Please rephrase the question more
13 specifically then.

14 MR. CULLEN: Sure, sure.

15 BY MR. CULLEN:

16 Q Comparing the difference in the city's financial
17 structure before and after the execution of the post-petition
18 financing, are there -- is there any impact of the latter
19 structure on creditors?

20 A Yes. Yes, there is.

21 Q Explain, please.

22 A Well, if the forbearance agreement and post-petition
23 financing are approved, the city will have reduced secured
24 claims, which will allow unsecured claims to get a better
25 recovery. It will also stabilize cash flows. We'll no

1 longer have the risk of losing the gaming revenues, which
2 means the city will have access to that cash flow either for
3 reinvestment or future debt service.

4 Q Do you have an understanding of the term "working
5 capital"?

6 A Yes.

7 Q What is the importance of working capital on an
8 enterprise or a city's balance sheet?

9 A Working capital allows an enterprise the ability to
10 manage through cyclicalities and lags in revenue receipts
11 against expenses. Expenses tend to get paid on a regular
12 basis. Revenues can, unfortunately, come in on an irregular
13 basis. Working capital is normally retained to allow the
14 city to operate in an ordinary course with its creditors on
15 the trade side and make sure it can pay its bills when they
16 come in irrespective of when the revenues come in.

17 Q Is there a relationship between the portion of the
18 financing which is not directed to taking out the swap
19 counterparties and the concept of working capital?

20 A Yes. When we sized the loan, we determined that the city
21 really needed to maintain two to three months of cash on its
22 balance sheet in order to be able to operate in the ordinary
23 course. \$120 million is roughly that number.

24 Q And in the process of going out to seek this DIP
25 financing, did you consider the idea of seeking unsecured

1 financing?

2 A We thought about it and dismissed it as impractical.

3 Q When you say you dismissed it as impractical, why is
4 that?

5 A Well, again, based on my experience, I've never seen any
6 post-petition financing be done on an unsecured basis.
7 Lenders in this field always want security. They're not
8 going to take what I would call plan risk. If they were an
9 unsecured lender, they would be taking that. And I don't
10 think there's any case that I'm aware of where that's been
11 done.

12 MR. HACKNEY: Your Honor, I would renew my objection
13 to this limited opinion testimony and move to strike it. I
14 understand the Court's prior ruling with respect to his
15 general expertise, but when you go a step further and you
16 say, "Based on my experience in the non-municipal context,
17 I've decided that we have no chance of getting unsecured
18 financing here in the municipal context," the lack of
19 experience sourcing municipal financing just seems
20 particularly germane.

21 THE WITNESS: Well, we did test this. Sorry.

22 MR. CULLEN: He gets a turn.

23 THE WITNESS: I'm sorry. Apologize.

24 THE COURT: Yeah. We don't usually let witnesses
25 respond to evidentiary objections. No. The objection is

1 overruled. The Court is satisfied that the witness has
2 sufficient experience to provide the -- to provide the Court
3 with reliable information on this.

4 MR. CULLEN: Thank you, your Honor.

5 BY MR. CULLEN:

6 Q Make it clear. You've been at this for 27 years; is that
7 correct?

8 A That's correct.

9 Q Is it your testimony that there has never been, in your
10 experience, a post-petition financing that was unsecured?

11 A I have never placed such a financing nor am I aware of
12 one, but in this case we actually tested the hypothesis of
13 whether one could even be available because in July before we
14 actually started --

15 Q Let's question and answer.

16 A Okay. Sorry.

17 Q How did you test the hypothesis?

18 A Well, recognizing this would be the first time the city
19 had ever done it, we wanted to go and test the market early
20 to find out, well, could we even do it, would it be
21 practical, and so in July we contacted a very limited number
22 of major banks, and we asked them would they be willing to
23 provide debtor in possession financing to the city if and
24 when that became necessary to do so. And we actually got
25 responses back indicating that they might be willing to do

1 it, but not on any basis except security being granted.

2 MR. PEREZ: Objection, your Honor. That's just
3 blatant hearsay, what he testified to.

4 THE COURT: You'd have them bring in representatives
5 of each of the banks to testify?

6 MR. PEREZ: No, I wouldn't, your Honor, but it is
7 hearsay, your Honor.

8 MR. CULLEN: It's a normal part -- can I -- I'll
9 just ask him another question to lay a foundation if the
10 Court wants me to or --

11 THE COURT: No. The Court will overrule the
12 objection.

13 BY MR. CULLEN:

14 Q Normal part of your function in going out and getting DIP
15 financing is testing the market; is that correct?

16 A Yes.

17 Q Okay. And you did that here, as you testified?

18 A Yes, we did.

19 Q I'd like to show you a document which has not been
20 admitted into evidence, I think objected to on hearsay
21 grounds, the Exhibit 61, City 61, letter from JPMorgan. I'm
22 going to move this into evidence after I show it to him. Do
23 you want to object now and then have me do it?

24 MR. PEREZ: No, no.

25 MR. CULLEN: How do you want to do it?

1 THE COURT: Well, let's have the witness identify
2 it, and then you can move for its admission.

3 BY MR. CULLEN:

4 Q Can you just take a look at that, please?

5 MR. CULLEN: No. Don't put it up yet. We haven't
6 gotten --

7 BY MR. CULLEN:

8 Q Can you identify that, sir?

9 A Yes, I can.

10 Q Tell us what it is.

11 A Well, we -- as I testified earlier, we'd gone to a
12 handful of major banks and asked them if they'd provide post-
13 petition financing for the city. JPMorgan was one of the
14 banks we asked, and this was their response.

15 MR. CULLEN: Could I move the admission of City 61,
16 please?

17 THE COURT: Any objections?

18 MR. HACKNEY: Yeah. I object. I mean this is
19 classic hearsay.

20 MR. PEREZ: Yes.

21 THE COURT: What's the purpose of offering it?

22 MR. CULLEN: This is what he got back when he tested
23 the market. It speaks directly to the issue of whether
24 JPMorgan was telling him that it might be available or might
25 not on an unsecured basis. It's the result of his testing of

1 the market which corroborates his testimony which was
2 objected to earlier.

3 THE COURT: The Court will admit it for the purpose
4 of showing the response that he got.

5 (City Exhibit 61 received at 2:40 p.m.)

6 THE COURT: And that's 61, did you say?

7 MR. CULLEN: 61.

8 BY MR. CULLEN:

9 Q If I could go to the fourth page of the exhibit, which is
10 page 1 of the confidential memorandum attached to the
11 correspondence -- do you have that, sir?

12 A Yes.

13 Q And if you could read out for the Court what JPMorgan was
14 telling you in -- under the third shaded heading, the second
15 paragraph beginning "The keys."

16 A The entire --

17 Q Can you read --

18 A The entire paragraph? I can read it, yeah.

19 Q Yeah.

20 A "The keys to any DIP financing and to the city's ongoing
21 access to capital will be the strength of the security
22 interest in certain of the city's general fund revenues and
23 the ability to restore investor confidence and achieve access
24 to the capital markets for the DIP financing take-out."

25 MR. HACKNEY: Your Honor, I'd move to strike this

1 testimony. We're now reading the words of someone else and
2 asking Mr. Buckfire what they mean. I don't think it's
3 appropriate.

4 MR. PEREZ: And I think it also goes beyond the
5 extent that you allowed it in, your Honor, because now
6 it's --

7 THE COURT: No.

8 MR. PEREZ: -- going for the truth of the matter.

9 THE COURT: No. It's not being offered for the
10 truth. It's being offered to show that this is the -- the
11 significance of this is the legal significance that this is
12 what the city got when it inquired. Go ahead and read it.

13 THE WITNESS: "The city does not currently have
14 market access on its own credit, and we believe it is
15 unlikely the city will regain market access immediately upon
16 emergence from bankruptcy, at least not without paying an
17 extraordinarily high market premium if access could be
18 achieved."

19 BY MR. CULLEN:

20 Q In performing your, as you testified, customary function
21 of testing the market with respect to the features of a
22 proposed financing, what would you -- what did you conclude
23 when you received this?

24 A That we would not be able to raise financing unless we
25 had collateral to offer to the marketplace, and we'd gotten

1 this response in early July. We had gone out in June well in
2 advance of having to actually decide whether or not we needed
3 a DIP at all.

4 MR. CULLEN: You can take it down.

5 BY MR. CULLEN:

6 Q With respect to the DIP bidding process, what would you
7 call that? What would be your word, easier --

8 A The solicitation process.

9 Q The solicitation process. With respect to the
10 solicitation process, what was your role?

11 A Supervisory.

12 Q And when you say "supervisory," what does that actually
13 entail?

14 A Well, my partners, Ms. Corio and Mr. Doak, were primarily
15 responsible for managing the process. They would let me know
16 from time to time how it was going. They would from time to time
17 ask me a question about how this might relate to other
18 aspects of our planning and our bankruptcy process, but
19 pretty much they ran the entire thing.

20 Q Okay. And in the terms of the solicitation itself, was
21 there a template or guideline sent out?

22 A Yes. We'd sent out a request for proposal, which had an
23 attachment called an indicative term sheet we asked people to
24 respond to.

25 Q And what was the function of that term sheet?

1 A We wanted to guide people who might have an interest in
2 lending to the city to what, in fact, we thought we could
3 offer so they wouldn't waste their time in proposing things
4 we did not want to or could not offer. We also wanted to
5 make sure that if they did want to propose something
6 different, they knew they were going to be offering something
7 off of a baseline that everybody else hopefully would respond
8 directly to.

9 Q Did you have any role in assessing the bids that actually
10 came in?

11 A No.

12 Q Do you have any basis for opining as to whether or not
13 the city got a good deal in this DIP financing?

14 A Yes. Based on the proposal we received, I think the city
15 got a highly competitive and low cost financing.

16 Q Okay. When you say based on the proposal you received
17 you had a highly competitive and low cost answer, what leads
18 you to that conclusion? Could you unpack that for me,
19 please?

20 A Well, we asked in excess of 50 people for proposals. We
21 got back over a dozen. We ended up, I think, with four or
22 five that were fully committed to and proposed by lenders,
23 and we picked the cheapest one.

24 Q Did at various -- were there various Syncora proposals
25 throughout this period?

1 A There were at least two.

2 Q Can you describe the first one?

3 A Well, the first one was not responsive to our term sheet
4 or RFP, but on its face it was extremely expensive. I think
5 it required something like \$70 million in fees to the lenders
6 in exchange for making a DIP loan. And we had concerns
7 beyond that about whether or not they really could perform
8 their role. We asked them directly if they'd ever made a DIP
9 loan before. The answer was no. We were concerned about
10 their own financial condition, the fact that they were
11 willing to expose potentially \$350 million of cash to a loan
12 to the city that would represent a material portion of their
13 cash reserves. I would be surprised if they would actually
14 be allowed to do that. In any case, they weren't willing to
15 respond to the RFP or the term sheet we put out nor were they
16 willing to propose it on a basis we thought could be
17 competitive.

18 Q And was there a later Syncora bid or offer?

19 A Well, the understanding is they provided one to the City
20 Council after we announced we had decided to work with
21 Barclays, and the terms of that one were also very expensive.

22 MR. CULLEN: That's all I have, your Honor.

23 CROSS-EXAMINATION

24 BY MR. HACKNEY:

25 Q Good afternoon, Mr. Buckfire. My name is Steve Hackney.

1 We've had the chance to meet before at your deposition, I
2 think. Nice to see you again.

3 A Good afternoon.

4 Q I'm going to be asking you some questions today. I think
5 some of them may sound familiar, but we'll see how it goes.
6 Your firm, Miller Buckfire, is employed by the city as its
7 investment banker; isn't that correct?

8 A Yes.

9 Q And the forbearance agreement that I think is already in
10 evidence at Exhibit 8 is the document that you led the
11 negotiation of the business terms of; isn't that correct?

12 A That's correct.

13 Q Now, your role in connection with the agreement was to
14 negotiate its business terms on behalf of the City of
15 Detroit; isn't that right?

16 A That's correct.

17 Q The decision to enter into this agreement on behalf of
18 the city was made by Mr. Orr; correct?

19 A Correct.

20 Q Now, Mr. Buckfire, you have negotiated a few deals in
21 your lifetime as an investment banker; isn't that correct?

22 A Yes.

23 Q As a negotiator, you need to have an understanding of the
24 financial needs and desires of your client as well as the
25 counterparty with whom you're negotiating; isn't that

1 correct?

2 A Yes.

3 Q You also have to have some understanding of the legal
4 framework in order to negotiate effectively; isn't that
5 right?

6 A Yes.

7 Q Now, I'd like to discuss your state of mind as you're
8 entering into your first round of negotiations with the swap
9 counterparties. One thing that you understood was that there
10 were events of default under the collateral agreement that
11 would allow the swap counterparties to trap cash if they
12 chose to do so; correct?

13 A Yes.

14 Q You also believe that the swap counterparties could
15 declare a termination event and potentially be paid
16 approximately \$400 million; isn't that right?

17 A Yes.

18 Q And your understanding was that they could do so
19 unilaterally; isn't that right?

20 A Yes.

21 Q And your understanding was also that there was no other
22 party out there that could direct the swap counterparties'
23 actions; isn't that correct?

24 A Yes.

25 Q Your understanding also was that FGIC and Syncora had no

1 rights under the collateral agreement; isn't that correct?

2 A Yes.

3 Q And your understanding on these points remained
4 consistent all the way up until the execution of the
5 forbearance agreement on July 15, 2013; isn't that right?

6 A Yes.

7 Q Now, I'd like to ask you about a couple things that you
8 did not understand to be true at the time that you were
9 conducting these negotiations. First, you did not understand
10 that the collateral agreement and the cash trapping were
11 securing the city's obligation to the service corporations
12 and the service corporations' obligations to the swap
13 counterparties under the swap; correct?

14 MR. CULLEN: I'll object to the form of that
15 question. It seems a little complicated for a lay witness.

16 MR. HACKNEY: Your Honor, this is already in
17 evidence in the statement of facts in terms of the nature
18 of --

19 THE COURT: If the witness doesn't understand the
20 question, he can say so, but I'll permit it. Go ahead, sir.

21 THE WITNESS: Would you mind repeating it?

22 BY MR. HACKNEY:

23 Q Yeah, sure. You did not understand that the collateral
24 agreement and the cash trapping associated with the
25 collateral agreement were securing the city's obligation to

1 the service corporations and the service corporations'
2 obligations to the swap counterparties under the swap;
3 correct?

4 A That's a very complicated question.

5 Q I'll represent to you it's not the first time I've asked
6 it to you, but if you'd like to take a look at your
7 deposition, I'm happy to --

8 A No. That's fine. I've done a lot of depositions, so I
9 can't remember all of them.

10 Q That's okay. Isn't what I'm saying correct? You did not
11 understand that to be the case?

12 A That's correct.

13 Q And you also did not understand that the collateral
14 agreement ultimately secured the termination payment that
15 might be made under the swaps; correct?

16 A No. The cash from the gaming revenues was, in fact, the
17 security for the swaps. That was the whole point of the
18 collateral agreement.

19 MR. HACKNEY: If I can approach, your Honor?

20 THE COURT: Sure.

21 MR. HACKNEY: Your Honor --

22 BY MR. HACKNEY:

23 Q Mr. Buckfire, these are a copy of your two depositions in
24 this case. They're separated by a little tab two. I'd like
25 you to look at the first deposition, which was at page 113,

1 line 23. Tell me when you have it, sir. You have that page
2 and line, sir?

3 A No. I see it.

4 Q "Question: Did you understand that the
5 collateral agreement and the cash trapping were
6 securitizing the city's obligations to the service
7 corporations and the service corporations'
8 obligations to the swap counterparties under the
9 swap?

10 No.

11 Question: Did you understand that the
12 collateral agreement, what it was ultimately
13 securing was the termination payment that might be
14 made under the swaps?"

15 And then there was an objection, and then you
16 answered, "No." Were you asked those questions, and did you
17 give those answers, sir?

18 A I did.

19 Q In negotiating this agreement, you never considered
20 whether the casino revenues constituted special revenues
21 under the Bankruptcy Code; isn't that correct?

22 A That's correct.

23 Q You also did not evaluate whether the city had claims
24 against the swap counterparties; correct?

25 A I was advised there might be a risk of that.

1 Q My question was that you did not consider, you did not
2 evaluate whether the city had claims against the swap
3 counterparties; correct?

4 A Correct.

5 Q And this is important. And you don't know whether anyone
6 else working for the city had evaluated whether the city had
7 claims against the swap counterparties; isn't that correct?

8 A You lost me. You want to try the question again?

9 Q I've already established that you didn't evaluate any
10 claims; correct?

11 A Correct.

12 Q But you also didn't know whether anyone else had
13 evaluated whether the city had claims against the swap
14 counterparties; isn't that correct?

15 A That's correct.

16 Q Now, your testimony was that access to these casino
17 revenues is an issue of life or death for the city, I
18 believe, or words to that effect; isn't that right? It was a
19 very important issue.

20 A Yes.

21 Q Now, your retention dates back to January -- Miller
22 Buckfire's retention dates back to January of 2013; isn't
23 that right?

24 A That's correct.

25 Q Now, despite the fact that this was an important issue --

1 and I assume you recognized it one at the earliest times of
2 your retention; is that right?

3 A Yes, in January.

4 Q But isn't it true that you did not attempt to engage the
5 swap counterparties in negotiation in January, February,
6 March, April, or May of 2013; isn't that correct?

7 A That's correct.

8 Q And you delayed negotiating with the swap counterparties
9 even though it was your understanding dating back to January
10 2013 that their patience was wearing thin; correct?

11 A That's correct.

12 Q Now, at the time your firm reengaged, you got yourself
13 back up to speed on the relevant issues, including the state
14 of play on the swap; isn't that correct?

15 A Correct.

16 Q Your understanding at that time was that the swap
17 counterparties had had the right to terminate the swap dating
18 back to March of 2012; isn't that right?

19 A Correct.

20 Q And during the 14-month period between March 2012 and the
21 end of May 2013, you understood that the swap counterparties
22 had never terminated the swap; isn't that right?

23 A That's right.

24 Q And your understanding also was that during that same 14-
25 month period, they had never demanded that cash be trapped;

1 isn't that correct?

2 A That's correct.

3 Q And in addition to that, the swap counterparties never
4 communicated to you that they would terminate the swap if
5 resolution was not reached by a certain date; isn't that
6 correct?

7 A Correct.

8 Q Now, the initial meeting with the swap counterparties on
9 June 4, 2013, was held at the behest of the city; isn't that
10 correct?

11 A That's correct.

12 Q During those meetings, you told the swap counterparties
13 that the city was going to fight to stop them from trapping
14 cash or words to that effect; isn't that correct?

15 A That was the second part of the meeting.

16 Q During this time period, you told them that; correct?

17 A After we explained the financial condition of the city to
18 them, yes.

19 Q But you did not describe what claims the city would
20 litigate aggressively to the swap counterparties; isn't that
21 right?

22 A That's correct.

23 Q And you did not express the city's views on the merits of
24 the litigation; isn't that right?

25 A That's correct.

1 Q And you never attempted to argue the merits of why the
2 swap counterparties wouldn't be able to trap cash; isn't that
3 correct?

4 A That's correct.

5 Q And you don't recall anyone else doing so on behalf of
6 the city either. Isn't that also correct?

7 A Yes.

8 Q Between June 11th and the July 15th execution of the
9 forbearance agreement, you never attempted to argue the
10 merits of the city's case to the swap counterparties; isn't
11 that correct?

12 A That's correct.

13 Q And you never witnessed anyone else do so on behalf of
14 the city either; isn't that right?

15 A That's correct.

16 Q Now, prior to the agreement in principle being struck,
17 neither you nor anyone else at Miller Buckfire performed
18 analysis of what interest rates were likely to be in the
19 future; isn't that correct?

20 A I don't understand that question. We, of course, looked
21 at the LIBOR forward curve to try to determine what our
22 interest rate risk would look like.

23 Q Let me direct your attention to page 22 of your
24 deposition --

25 A Which one?

1 Q -- line 4. It's the first one, page 122, line 4. Do you
2 have that, sir?

3 A I do.

4 Q Page 122, line 4,

5 "I have a broader question, which is at anytime
6 prior to June 11th, did you or anyone else at Miller
7 Buckfire, to your knowledge, perform an analysis of
8 what interest rates were likely to do in the future?

9 Answer: No."

10 Were you asked that question? Did you give that
11 answer?

12 A I did.

13 Q And prior to June 11th, you didn't study any forward
14 LIBOR curves; isn't that right?

15 A That's correct.

16 Q In fact, as of the execution date of the forbearance
17 agreement on July 15, 2013, neither you nor anyone else at
18 Miller Buckfire had undertaken an assessment of what interest
19 rates were likely to do in the future; isn't that correct?

20 A That's correct.

21 Q Now, by June 11th, you have struck an agreement in
22 principle that involves three key parts, according to your
23 testimony, swap counterparties will allow the casino revenue
24 to continue to flow, the city will be granted an option to
25 direct the termination of the swap, and the termination value

1 will be at a discount to the one provided for in the swap; is
2 that correct?

3 A That's correct.

4 Q Now, I understand that you're not an attorney, but you
5 are a sophisticated businessman who -- and you're probably
6 glad that you're not an attorney, so --

7 A I'll stipulate I'm not an attorney.

8 Q There you go. But you -- I understand that you are not
9 an attorney, but you are a sophisticated businessman who
10 deals with legal documents on a regular basis; isn't that
11 right?

12 A Yes.

13 Q And your understanding of one of the benefits of the
14 forbearance agreement is that the swap counterparties have
15 waived their right to trap cash in exchange for the other
16 things that they got; isn't that correct?

17 A Yes.

18 Q I'd like to ask you some questions about the service
19 corporations now if I could. The service corporations are
20 also a party to the forbearance agreement; isn't that
21 correct?

22 A You're beyond my knowledge. I never studied the service
23 corporations.

24 Q I'm just -- so let's go in baby steps. I know that's
25 true and that you were unfamiliar with them, and we're going

1 to get to that, but baby steps.

2 A I'm still unfamiliar with --

3 Q To this day. Okay. You do understand that they are
4 parties to the forbearance agreement; isn't that correct?

5 A Yes.

6 Q But the service corporations were not at any of the
7 meetings in early June that led to the agreement in principle
8 with the swap counterparties; isn't that right?

9 A Yes.

10 Q And you never engaged in any arm's length negotiations
11 with the service corporations; isn't that correct?

12 A Yes.

13 Q And you never witnessed anyone else do so either;
14 correct?

15 A Correct.

16 Q Your understanding was that the service corporations were
17 controlled by the city; correct?

18 A Yes.

19 Q And your understanding was that the city was acting on
20 behalf of the service corporations in connection with the
21 forbearance agreement; isn't that right?

22 A Yes.

23 Q In fact, your understanding is that Mr. Orr directed the
24 service corporations to execute the agreement, and that's
25 what they did; right?

1 A Yes.

2 Q I'd like to ask you a couple brief questions about
3 Syncora and FGIC, which is during this first half of June
4 when you're negotiating the business terms of the forbearance
5 agreement, you did not invite Syncora to participate in those
6 negotiations; isn't that correct?

7 A That's correct.

8 Q And you also did not invite Federal Guaranty Insurance
9 Company, affectionately known of as FGIC, to participate in
10 those negotiations, did you?

11 A That's correct.

12 Q And to your knowledge, no one else did either; isn't that
13 right?

14 A Yes.

15 Q Now, your understanding that you testified to on direct
16 was that as part of the 2009 restructuring that led to the
17 collateral agreement -- you remember that testimony?

18 A I do.

19 Q Your understanding was that the swap counterparties
20 obtained the right to walk away from the swaps if interest
21 rates ever looked like they were going into territory where
22 it might be positive for the city and the service
23 corporations. Isn't that your testimony?

24 A That's my understanding.

25 Q And you understand that that's called an optional early

1 termination under the swap; right?

2 A Yes.

3 Q You know that's distinct from an early termination;
4 right?

5 A Yes.

6 Q And you understand obviously that when the swap
7 counterparties exercise an optional early termination, they
8 take nothing from the service corporations; correct?

9 A I don't know that.

10 Q You don't know that to be true?

11 A I've never studied the service corporations or what their
12 rights are.

13 Q My point was that when the swap counterparties exercise
14 this optional early termination, they are paid nothing. That
15 was the point of your testimony about --

16 A Yes. That's right.

17 Q That's the walk-away; right?

18 A That's correct.

19 Q But they get paid nothing; right?

20 A Well, if they terminate the swap, then by definition they
21 would be paying nothing to the city.

22 Q They would be paying nothing to the city, but they would
23 also be paid nothing; correct?

24 A Well, that's right.

25 Q Now, as we stand here today, I believe you testified the

1 swap counterparties are very much in the money with the
2 swaps; correct?

3 A Correct.

4 Q And isn't it a fact that the swap counterparties have
5 never threatened to you that they were going to exercise an
6 optional early termination; isn't that correct?

7 A That's correct.

8 Q And that's because it wouldn't be economically rational
9 to terminate a swap on an optional early basis and be paid
10 nothing when the swaps are substantially in the money;
11 correct?

12 A No, because the optional termination event would only
13 take place when they were out of the money, not in the money.

14 Q Let me direct your attention to page 151, line 2. Do you
15 have that in front of you, sir?

16 A I do.

17 Q Let me take us -- let me back you up to page 150, line
18 17. You have that, sir?

19 A I'm sorry. What page are you on again?

20 Q That's okay. Page 150, line 17. Page 150, line 17. Do
21 you have it, Mr. Buckfire?

22 A Yes, I do.

23 Q All right. "Question: And obviously the swap
24 counterparties have never threatened to exercise an optional
25 early termination, correct," and there was an objection, and

1 then I said "to you?"

2 "Answer: No.

3 Question: That wouldn't make sense, would it?

4 Answer: Not as long as you're being paid on
5 time.

6 Question: And also why would you terminate a
7 swap on an optional early basis and be paid nothing
8 when it is worth, by your testimony, approximately
9 \$300 million; correct?"

10 And there was an objection.

11 "Answer: It wouldn't be economically rational."

12 Were you asked those questions? Did you give those
13 answers?

14 A Yeah, but you're confusing optional termination versus
15 their right to terminate in the event of a default. Optional
16 termination refers to their right to terminate at any time,
17 which rationally they would only do if the swap moved against
18 them where instead of the city owing them money, they would
19 owe the city money.

20 Q I agree with you 100 percent.

21 A Good.

22 Q Now, your understanding is that in exchange for all the
23 consideration, the swap counterparties termination rights are
24 being discounted to somewhere between 75 percent and 82
25 percent depending on when the option is exercised; isn't that

1 correct?

2 A That's correct.

3 Q Now, I wanted to follow up on something that you said on
4 your direct testimony, which was you testified that this
5 is -- that this was one of the most hard-fought negotiations
6 of your entire career; is that right?

7 A Yes.

8 Q And you have, I will say, quite a distinguished career, I
9 think it was noted on your direct examination. I'm assuming
10 that you've been in a lot of hard-fought negotiations. Is
11 that fair?

12 A That's fair.

13 Q But is it your testimony that a negotiation that lasted a
14 week that basically went you opened at 50 and then you guys
15 ended around 75 where you had no analytical basis to
16 challenge the swap counterparties was one of the hardest
17 fought negotiations of your life?

18 A Yes.

19 Q And there were also very hard-fought negotiations around
20 the dates on which those discounts would increase; correct?

21 A That's correct.

22 Q And the initial negotiation led to the 75 percent date
23 expiring on August 30; correct?

24 A Correct.

25 Q So they only gave you six weeks of time to really get

1 that big August 30 75-percent discount rate; correct?

2 A Correct.

3 Q And then we had the objections, and this hearing got all
4 involved; isn't that right?

5 A That's right.

6 Q And somewhere along the line, the swap counterparties
7 managed to extend that 75-percent discount rate that you had
8 fought so hard for by four months; isn't that correct?

9 A Correct.

10 Q Did you handle those negotiations as well?

11 A No.

12 Q Okay. I'd like to ask you some questions, if I could,
13 sir, about the post-petition financing. To begin, the
14 agreement with Barclays contains a provision for market flex;
15 correct?

16 A Correct.

17 Q And under the terms of the market flex, the LIBOR floor
18 can be increased from one percent to two percent, and the
19 margin above that can be increased from two and a half
20 percent to four and a half percent; correct?

21 A Correct.

22 Q And I just want to emphasize that's a floor, a LIBOR
23 floor; correct?

24 A That's right.

25 Q So if the interest rates in the future go up above two

1 percent, the interest rate could continue to rise with it.
2 It just means it couldn't be lower than six and a half
3 percent if the full amount of the market flex is expired --
4 is implemented; correct?

5 A Yes.

6 Q And so if the market flex provision is fully implemented,
7 the interest rate on the DIP financing loan would increase
8 from three and a half percent to a minimum of six and a half
9 percent; correct?

10 A Correct.

11 Q Now, in addition to the market flex provision, Barclays
12 will also receive a commitment fee; right?

13 A Correct.

14 Q And when evaluating the various proposals that you all
15 received at Miller Buckfire, you evaluated the costs of those
16 proposals; isn't that correct?

17 A Correct.

18 Q And the cost of this facility was an important factor in
19 Miller Buckfire's evaluation of the proposals; isn't that
20 right?

21 A Yes.

22 Q Now, I'd like to go back and touch on these issues with
23 respect to unsecured financing. Let me ask you a question,
24 Mr. Buckfire. Do you remember that you opined that it was
25 not feasible for the city to obtain unsecured financing

1 during these cases? Do you remember that testimony?

2 A I do.

3 Q What is your understanding of the nature of the unsecured
4 credit there?

5 A The promise to the city to repay.

6 Q How would it be treated in a subsequent bankruptcy in the
7 plan?

8 A Well, if it was an unsecured promise to repay, it would
9 be treated as a general unsecured obligation.

10 Q That's right. Your understanding is that it would be
11 treated just like my -- or some COP's that I hold; right?

12 A Potentially, yes.

13 Q And so what would happen is they would lend the money at
14 a hundred cents on the dollar, and they would lend \$350
15 million to the city, but then they'd immediately just be in
16 the throngs with all the unsecured creditors who are likely
17 to get far less than that; correct?

18 A No. That's not what they would ask for. You would
19 ask -- they certainly would have asked for priority in
20 payment as part of a plan.

21 Q Because they'd be treated as an administrative expense;
22 right?

23 A Presumably. That's what they would ask for --

24 Q And you under -- well --

25 A -- but there was no one to ask.

1 Q There was no one to ask?

2 A We already tried that.

3 Q Okay. Because -- and you also understand, by the way,
4 that it's my understanding that a debtor cannot confirm a
5 plan of adjustment unless it pays off all of its
6 administrative expenses; isn't that right?

7 A Correct.

8 Q In fact, it's my understanding that your firm is
9 providing services to these debtors during the bankruptcy
10 case; correct?

11 A We're the investment banker to the city.

12 Q Right.

13 A That's correct.

14 Q Pursuant to a service contract; isn't that right?

15 A That's correct.

16 Q And your service contract is not secured; isn't that
17 right?

18 A That's correct.

19 Q And neither are any of the other professionals' service
20 contracts secured; right?

21 A That's correct.

22 Q And, in fact, isn't the total amount of the fees to the
23 service professionals currently ballparked in the area of \$95
24 million?

25 A That's an estimate that's floating around, yes.

1 Q And that's all unsecured amounts; correct?

2 A Correct.

3 Q But all of those folks, I assume yourself included,
4 expect those to be treated as administrative expenses and
5 paid in full; correct?

6 A It's a risk we accept by being professionals who work
7 with bankrupt companies and cities.

8 Q Now, the City of Detroit is your first engagement on
9 behalf of a Chapter 9 debtor in the context of an actual
10 Chapter 9 proceeding; isn't that correct?

11 A That's true.

12 Q Prior to this case, you had no personal experience
13 sourcing municipal financing; isn't that correct?

14 A That's correct.

15 Q And, in fact, to your knowledge, no one at Miller
16 Buckfire has previous experience sourcing municipal debt on
17 behalf of a municipality; isn't that right?

18 A That's correct.

19 Q Now, as part of the city's first proposal -- okay -- and
20 I'm talking in late August when you send out the RFP. Okay?
21 That's what I mean by the first proposal.

22 A Well, we think of it as the second proposal, but go
23 ahead.

24 Q Are you thinking of the one in July?

25 A The one in June.

1 Q The one in June? I'll come back to that in a second
2 because I'll ask a similar question there, but let's deal
3 with the second proposal then. With respect to the second
4 proposal, it began by -- it included within it offering as
5 collateral income tax revenues, wage tax revenues, and asset
6 proceeds; isn't that right?

7 A Yes.

8 Q And do you agree that your colleague, Mr. Doak, is also
9 someone who you view as having great expertise in the field
10 of sourcing financing?

11 A Yes.

12 Q Okay. Wouldn't you agree that when you go out to the
13 market with a proposed collateral, that it's unlikely that
14 the people whom you solicit are going to call you back and
15 say, "I will take less collateral"?

16 A That's possible.

17 Q Isn't it likely?

18 A No. It's possible.

19 Q Okay. So if Mr. Doak said it's likely, you would
20 disagree with him?

21 A I'm not sure we're saying anything different. It's just
22 completely off market to expect a debtor to raise money on an
23 unsecured basis.

24 Q To your knowledge, before going out to the prospective
25 lenders with a term sheet in late August that proposed

1 collateral, Miller Buckfire did not attempt to test the
2 market for the availability of unsecured credit; isn't that
3 correct?

4 A Aside from what we did in June, that's correct.

5 Q Let me direct you to the second deposition you gave, sir,
6 which is at page 23, line 22. Do you have that, sir?

7 A Yes.

8 Q "Question: Okay. Before going out to
9 prospective lenders with a term sheet that proposed
10 collateral, was any effort made to test the market
11 for the availability of unsecured credit?

12 Answer: Not to my knowledge.

13 Question: You didn't make any phone calls to
14 see whether anybody would offer unsecured credit?

15 Answer: No."

16 Were you asked those questions? Did you give that
17 answer, sir?

18 A I did.

19 Q Now, in fact, your role in the process of soliciting and
20 negotiating post-petition proposals was very limited; isn't
21 that right?

22 A That's correct.

23 Q And your role was supervisory only to Mr. Doak; right?

24 A Correct.

25 Q Principal responsibility for the post-petition financing

1 was with Mr. Doak; isn't that right?

2 A Correct.

3 MR. HACKNEY: Now, just -- I'd like to, if I could,
4 impose upon the city perhaps to put this document up again,
5 which was the JPMorgan letter that we received -- or
6 whomever, yes. Thank you. It's City's Exhibit 61.

7 BY MR. HACKNEY:

8 Q That's the JPMorgan document that you were talking about
9 earlier. Do you remember that?

10 A I do.

11 MR. HACKNEY: And if I could impose on someone to
12 flip to what I think is called page 1 of the document but is
13 really page 4 --

14 BY MR. HACKNEY:

15 Q Do you see that there? That was what you were going back
16 for -- back and forth with Mr. Cullen on. You see that?

17 A I do.

18 Q So I want to focus your attention on something up at the
19 top there, which is that language that says, "The City of
20 Detroit is seeking potential debtor in possession financing."
21 By the way, I'll make a quick note. Isn't it true that a
22 city is not a debtor in possession?

23 A It's nomenclature. We refer to it as debtor in
24 possession. That's correct.

25 Q In your experience, all of your prior sourcings had been

1 on behalf of debtors in possession; isn't that right?

2 A That's right.

3 Q Okay. And so you used the common nomenclature even
4 though a city is not a debtor in possession; correct?

5 A That's right.

6 Q If you look at the second sentence there, it says, "The
7 city and its advisors have identified four distinct revenue
8 streams to be used as security to secure any potential
9 lending facility"; right?

10 A Correct.

11 Q And that's JPMorgan. They're writing back to you about
12 what they understand you've made inquiry of them about;
13 correct?

14 A Correct.

15 Q And so isn't it fair to say, Mr. Buckfire, that that
16 proposal that you sent out there also suggested collateral to
17 the market?

18 A But no one ever raises debtor in possession financing
19 without collateral.

20 Q My question was isn't it true that when you sent that
21 letter out --

22 A Yeah.

23 Q -- it proposed collateral to the market?

24 A Yes, it did.

25 Q Now, take a look down at the second paragraph under

1 "general fund" that you were focusing on with Mr. Cullen that
2 says, "the keys to any DIP financing." Do you see that?

3 A I do.

4 Q Now, the line you quoted I want to focus on. It says,
5 "The city does not currently have market access on its own
6 credit." Do you see that?

7 A I do.

8 Q And at the time that the city and you sent this to
9 JPMorgan, the city was not in bankruptcy; correct?

10 A No.

11 MR. CULLEN: Objection, your Honor. Sent what to
12 JPMorgan?

13 MR. HACKNEY: Whatever the solicitation was that
14 generated this response.

15 THE COURT: Just clarify the question for the
16 witness.

17 MR. HACKNEY: Sure.

18 BY MR. HACKNEY:

19 Q At the time that you sent the solicitation that generated
20 this response, the city was not in bankruptcy; correct?

21 A That's correct.

22 Q In fact, as of the time you got the response, the city
23 was still not in bankruptcy; correct?

24 A That's correct.

25 Q And so when JPMorgan said the city does not currently

1 have market access on its own credit, it was referring to the
2 pre-bankruptcy City of Detroit; correct?

3 A Read the rest of the sentence. The rest of --

4 Q I'm going to. That's where I'd like to take you next.
5 "We believe it is unlikely that the city will regain market
6 access immediately upon emergence from bankruptcy"; correct?

7 A Correct.

8 Q They did not address the concept of being paid on an
9 administrative basis like your firm is during the pendency of
10 the bankruptcy; isn't that correct?

11 A That's correct.

12 MR. HACKNEY: Your Honor, I have finished the lead
13 questioner portion of the examination and would tender the
14 podium to my objector colleagues.

15 THE COURT: Okay.

16 MS. ENGLISH: Good afternoon. Caroline English on
17 behalf of Ambac Assurance Corporation.

18 CROSS-EXAMINATION

19 BY MS. ENGLISH:

20 Q Good afternoon, Mr. Buckfire.

21 A Good afternoon.

22 Q Mr. Hackney did a great job of ruining my outline, so I
23 have -- I had 40 questions, and I now have 4. Okay?

24 A Okay.

25 Q Isn't it true, Mr. Buckfire, that when you went into the

1 negotiations with the swap counterparties, you went in under
2 the assumption that the swap counterparties had valid liens?

3 A Yes.

4 Q And isn't it also true that you never discussed with the
5 swap counterparties any legal arguments that the city might
6 have had with respect to the validity of their liens?

7 A That's correct.

8 Q Isn't it also true that you never discussed any of the
9 city's legal arguments or claims against the swap
10 counterparties with Mr. Orr?

11 A That's correct.

12 Q And, in fact, you were not even aware of what claims the
13 forbearance agreement was settling and releasing; isn't that
14 true?

15 A That's correct.

16 MS. ENGLISH: Thank you.

17 CROSS-EXAMINATION

18 BY MR. MARRIOTT:

19 Q Good afternoon, Mr. Buckfire.

20 A Good afternoon.

21 Q Vince Marriott. Nice to see you again. I think I --
22 Mr. Hackney did even better with my outline. You
23 testified -- I believe you testified earlier that the city --
24 you ultimately recommended the Barclays proposal to the
25 emergency manager on the basis that it was -- and I think

1 your phrase was "the cheapest one." Do you recall that
2 testimony?

3 A I do.

4 Q In order to evaluate among alternatives what's the
5 cheapest one, you have to know what the cost of each of the
6 alternatives is; correct?

7 A Correct.

8 Q I mean otherwise there's no basis to make a comparison;
9 correct?

10 A Correct.

11 MR. MARRIOTT: I have nothing further. Anyone else?

12 MR. GOLDBERG: Yes. I just need a minute, sir.

13 Sorry.

14 CROSS-EXAMINATION

15 BY MR. GOLDBERG:

16 Q Mr. Buckfire, you testified that the 2009 arrangement was
17 a one-sided arrangement only to benefit of the banks; is that
18 not correct? Wasn't that your words?

19 A Yes. The only benefit the city got was to cure the
20 default that existed at the time.

21 Q Okay. Have you looked at similar cases that have been
22 filed by the SEC against -- in connection with interest rate
23 swaps around the country, sir?

24 A No.

25 Q Have you looked at cases filed against Bank of America in

1 connection with wrongdoing with regard to municipal interest
2 rate swaps?

3 A No.

4 MR. GOLDBERG: Your Honor, I have a copy here of a
5 report on the municipal securities market. I've marked it as
6 Sole 1328. It's a report by the U.S. Securities and Exchange
7 Commission. I'd like to move for entry as evidence as a
8 public report.

9 MR. CULLEN: No objection, your Honor.

10 MR. GOLDBERG: You know, I can --

11 THE COURT: It is admitted.

12 (Sole Exhibit 1328 received at 3:21 p.m.)

13 MR. GOLDBERG: For simplification purposes -- it's a
14 140-page report. There's a specific section that I'm
15 interested in that I'll be looking at, so -- if it's okay
16 with your Honor.

17 THE COURT: What do you mean, "looking at"?

18 MR. GOLDBERG: That I'll be questioning the -- Mr.
19 Buckfire concerning this section.

20 THE COURT: Have you ever heard of this report?

21 THE WITNESS: No, your Honor.

22 THE COURT: I can't permit you to question the
23 witness about a report he's never seen.

24 MR. GOLDBERG: Your Honor, what I'm questioning him
25 about isn't about the content of the report. It's simply

1 that the report indicates various actions that have been
2 taken by the SEC in connection with interest rate swaps, and
3 it goes to whether a proper investigation in this case was
4 taken. In other words, what the issue in this case, is my
5 understanding --

6 THE COURT: You can ask him -- you can ask him if he
7 investigated anything you'd like to ask him --

8 MR. GOLDBERG: Okay.

9 THE COURT: -- but you can't confront him with a
10 report he's never seen.

11 MR. GOLDBERG: Okay. No problem, your Honor.

12 BY MR. GOLDBERG:

13 Q Did you do any investigation into whether the city
14 officials were properly informed of the dangers of the --
15 hedging derivatives in 19 -- in 2006 when they first went
16 into account?

17 A No.

18 Q Did you do any investigation into whether the city
19 officials were ever properly informed of the potential
20 dangers of hedging derivatives of interest rate swaps on a
21 city like Detroit in 2009?

22 A No.

23 Q Did you take a look at who was the swap advisor?

24 A No.

25 Q Did you take a look at whether the -- one swap advisor

1 was employed for both counterparties at the time these deals
2 took place?

3 A No.

4 Q Did you take a look at who paid the swap advisor?

5 A No.

6 Q Are you aware of questions concerning the LIBOR? Did you
7 do any investigation as to whether there were problems with
8 the application of the LIBOR in this case considering that
9 the LIBOR -- that UBS, for example, has admitted to
10 wrongdoing in connection with manipulation of the LIBOR?

11 A No.

12 Q Are you aware of UBS admitting to wrongdoing in
13 connection with the LIBOR?

14 A I've read newspaper reports about that.

15 Q Okay. In light of those newspaper reports, did you
16 consider looking into the effect of this considering that the
17 LIBOR was the index to which the swaps was tied?

18 A No.

19 Q Did you look into the fact that the City of Detroit was
20 actually in litigation -- that the SEC had done an
21 investigation of interest rate swaps with regard to the water
22 board, the Detroit Water Board?

23 A I'm not aware of that.

24 Q Did you call in the SEC, which is the body that basically
25 investigates these matters, between January of 2012 and May

1 of 2012? Did you make a call to the SEC to see -- "Come to
2 Detroit. Give us a hand taking a look and investigating
3 these," in light of the consequences for the City of Detroit?

4 A We weren't engaged by the city during that period.

5 Q I'm sorry. In January of 2013 to --

6 A No.

7 Q -- May 2013.

8 A No, we didn't call the SEC.

9 Q Okay. You indicated that the interest rate has become
10 more favorable based on -- I don't want to misstate it --
11 based on the future interest rate?

12 A Interest rates have increased since March of this year.

13 Q What interest rates have increased?

14 A Both forward LIBOR and forward treasuries.

15 Q The LIBOR has increased since March of this year?

16 A As has the treasury rate, yes.

17 MR. GOLDBERG: May I approach the witness, your
18 Honor?

19 THE COURT: With what, sir?

20 MR. GOLDBERG: This is a chart on LIBOR rates that
21 charts LIBOR rates historically and for this year and that
22 reflects what the current three-month LIBOR rate is as of
23 December of this year.

24 THE COURT: You may ask the witness if he's familiar
25 with that.

1 MR. GOLDBERG: Okay.

2 BY MR. GOLDBERG:

3 Q How did you make the --

4 MR. GOLDBERG: I'll do this a little -- I appreciate
5 that, your Honor.

6 THE COURT: Okay.

7 BY MR. GOLDBERG:

8 Q How did you make the determination that LIBOR rates had
9 gone down between March of this year and this current -- and
10 December, the three-month LIBOR rate?

11 A I didn't testify to that. I said LIBOR rates have gone
12 up.

13 Q Have gone up. I apologize. How did you -- strike that.
14 How did you make the determination -- you're specifically
15 talking about the three-month LIBOR; correct?

16 A No. I'm talking about the LIBOR curve, which is reported
17 publicly on the Bloomberg News Services, which goes out
18 effectively 20 or 30 years.

19 Q Okay. So you're not saying that the LIBOR -- the three-
20 month LIBOR is going down. You're saying that the LIBOR
21 curve --

22 A The curve itself has shifted up.

23 Q Okay. Okay. I appreciate the clarification. Mr.
24 Buckfire, in the months that you were in Detroit from January
25 to May of 2013 or to the present, have you had a chance to go

1 around the city and take a look at our neighborhoods?

2 A Yes.

3 Q Have you witnessed the absolute devastation in
4 neighborhoods all across the city?

5 A Yes, sir. I grew up here.

6 Q Where did you grow up?

7 A I'm well-aware of the condition of the city.

8 Q I'm sorry. Where did you grow up?

9 A Northwest side.

10 Q So the northwest side doesn't look like it did 30 years
11 ago, does it?

12 A No, it doesn't.

13 Q Boarded up buildings everywhere, isn't it?

14 A Yes.

15 Q Did you look into the effect of subprime lending by banks
16 like Bank of America and UBS on causing this devastation in
17 the City of Detroit?

18 A No.

19 Q Are you aware that Detroit led the country in subprime
20 loans from the period of 2004 to 2009?

21 A No.

22 Q Are you aware that according to city reports the city --

23 MR. CULLEN: Objection. Go ahead.

24 THE COURT: Sir?

25 MR. CULLEN: Finish your question.

1 MR. GOLDBERG: Thank you.

2 MR. CULLEN: I was going to object to the relevance
3 of this line.

4 THE COURT: What is the relevance?

5 MR. GOLDBERG: The relevance is that we're talking
6 about fairness. We're talking about paying banks, two banks
7 that had a major role in causing the financial crisis in the
8 city through their mortgage lending practices are now going
9 to be getting hundreds of millions of dollars and have
10 already received hundreds of millions of dollars. I think it
11 goes to the equitable question as to whether or not they are
12 entitled to this --

13 THE COURT: It's arguable. I'll permit you to --

14 MR. GOLDBERG: Thank you.

15 THE COURT: -- pursue it. Go ahead.

16 BY MR. GOLDBERG:

17 Q Are you aware that the City of Detroit had 69,000
18 mortgage foreclosures from 2004 to -- 2005 to 2009?

19 A I didn't know the exact number. I knew it was a lot.

20 Q Are you aware that the city -- that 40,000 of those
21 buildings will remain vacant according to a report issued by
22 the City of Detroit?

23 A Yes.

24 Q Are you aware that the bulk of those foreclosures were a
25 direct product of subprime lending?

1 A I did not know that.

2 Q Have you looked at the Wall Street -- Senate Select
3 Committee on Wall Street and the Financial Crisis which
4 documents the role of the banks in predatory lending
5 practices?

6 A No.

7 Q Clearly you never raised that to Bank of America.

8 A Not specifically, no.

9 Q Okay. And you are aware that Bank of America had one of
10 the largest subprime lending units since Countrywide. You
11 are aware of that.

12 A I am aware of that.

13 Q And I'm sure you're aware that they have many, many loans
14 in the City of Detroit if you're a financier?

15 A Yes.

16 Q You're also aware that UBS has been implicated in
17 subprime lending to a great extent, more than any other
18 foreign bank?

19 MR. CULLEN: Objection, your Honor. Implicated?

20 MR. GOLDBERG: I'm asking if he's aware of it.

21 THE COURT: Yeah. What do you mean by "implicated"?
22 Clarify the question, please.

23 MR. GOLDBERG: Okay. Sure. One second. I'm sorry.

24 BY MR. GOLDBERG:

25 Q In 2008 UBS had to write off \$19 billion in bad debt

1 because of its role in subprime lending.

2 A I'm not aware of that.

3 Q Are you aware that the Detroit Retirement Board filed an
4 action against both UBS and Bank of America for fraudulent
5 mortgage securities and the detrimental affect they had on
6 the Retirement Board?

7 A No.

8 Q I want to correct that. It was the Police and Fire
9 Retirement System who filed the action -- I apologize -- to
10 correct the record. They filed a class action in May of
11 2009, and among the entities named were Merrill Lynch, Bank
12 of America as successor to Merrill Lynch, and UBS.

13 A I didn't know that.

14 Q Are you aware that Chase Bank just was compelled by the
15 U.S. government to pay \$19 billion in damages for its role in
16 subprime lending and predatory lending practices?

17 A Yes.

18 Q You never considered any of these factors in terms of how
19 you would approach Bank of America and UBS?

20 A No.

21 Q I just have a couple more questions. You were involved
22 with the Barclay -- in negotiating the Barclay loan deal
23 itself; correct?

24 A No.

25 Q Are you familiar with the terms of the Barclay loan deal?

1 A In general, yes.

2 Q So is it fair to say that under the Barclay loan deal,
3 once the bankruptcy is over, once the bankruptcy is over,
4 there's a termination event where the entire swap termination
5 gets called in; correct?

6 A I'm sorry. I don't understand.

7 Q Okay. Let me clarify that, that once the bankruptcy is
8 over, the interest on the Barclay -- the 350 million loan
9 rises by two percentage points; correct?

10 A If we haven't repaid it in full, that's correct.

11 Q Okay. And that the -- and it's pledged by a four -- that
12 the swap termination part of the loan is paid by a \$4 million
13 a month payment?

14 A I don't recall specifically if that's there. We have to
15 pay the loan off at bankruptcy exit. We intend to do that.

16 Q Okay. And that that's secured by our city tax dollars?

17 A I'm sorry. Secured by what?

18 Q By city income tax dollars?

19 A Yes.

20 Q Okay. In the motion that was filed by the city in
21 connection with the approval of the DIP financing, they cited
22 that the city income tax revenues totaled about \$232 million.
23 Does that sound correct?

24 A Yes.

25 Q So \$48 million a year would be 20 percent of our tax

1 dollars being diverted to pay Barclays to pay off UBS and
2 Bank of America?

3 A I'm sorry. I think your math is incorrect. Are you
4 confusing the current swap with the Barclays post-petition --

5 A No.

6 Q -- financing?

7 Q No. I'm calculating the payments post-bankruptcy based
8 on \$48 million a year being used to pay off the Barclay loan,
9 the swap termination portion of the Barclay loan.

10 A I'd have to look at the terms you're referring to, but in
11 any case those are penalty provisions. We expect to pay off
12 the loan in full upon exit.

13 Q Okay. I'm just saying that the -- it's secured. It
14 means for the people of Detroit, the people that are going to
15 be here after this bankruptcy is over, 20 percent of our
16 tax -- income tax dollars are going to be diverted to pay off
17 a loan -- pay off a loan from Barclays to pay off UBS and
18 Bank of America. Is that a correct statement?

19 A The city has over a billion dollars in revenues. You're
20 talking about a penalty provision, which is highly unlikely
21 to be in effect because we intend to pay off the post-
22 petition financing upon exit with more advantageous
23 financing.

24 Q Oh, you do. Okay. Sounds good.

25 A But I don't understand what you're talking about.

1 Q You're going to get more, but you don't have that
2 financing in place, correct, sir?

3 A That's correct. We don't.

4 Q And what's pledged right now is that 20 percent -- is
5 that \$4 million a year is pledged post-bankruptcy.

6 MR. CULLEN: Objection. Asked and answered.

7 THE COURT: I'll permit it again. Go ahead.

8 BY MR. GOLDBERG:

9 Q Is that what's pledged?

10 A Could you repeat the question?

11 Q What's pledged right now is that post-bankruptcy, \$4
12 million a year secured by income tax revenues from the people
13 of Detroit is going to be used to pay off a loan from
14 Barclays to pay off a swap termination event in order to --
15 to the benefit of UBS and Bank of America?

16 A If we haven't been able to repay it any other way, that's
17 right.

18 Q And, in fact, according to Doak, my understanding is that
19 once the quality of life portion is paid off, then there will
20 be eight million. Eight million a month is going to be
21 sucked from income tax revenues to pay off the swap
22 termination; is that correct?

23 MR. CULLEN: Objection. Using one witness testimony
24 to question another.

25 BY MR. GOLDBERG:

1 Q Well, I mean is that correct?

2 MR. GOLDBERG: I shouldn't have --

3 THE COURT: The objection is --

4 MR. GOLDBERG: I shouldn't have --

5 THE COURT: The objection is sustained. Please
6 rephrase.

7 MR. GOLDBERG: Yeah. I'll phrase it differently.

8 BY MR. GOLDBERG:

9 Q That once the quality of life portion of the 350 million
10 Barclay loan is paid off, then \$8 million a month will be set
11 aside from Detroit income tax revenue or be secured by income
12 tax revenue to pay off this loan in order -- which is the
13 swap termination part of the loan; is that correct?

14 A I believe so.

15 Q Okay. So 96 -- another 40 percent of our tax revenues
16 will be going to pay off UBS and Bank of America.

17 A Only that portion of the city's revenues.

18 MR. GOLDBERG: Okay. I have no further questions,
19 your Honor.

20 THE COURT: Any further questions by objectors?

21 CROSS-EXAMINATION

22 BY MS. GREEN:

23 Q Good afternoon, Mr. Buckfire. Jennifer Green on behalf
24 of the Retirement Systems for the City of Detroit. I have
25 very few questions as well since the first set of objecting

1 parties have asked all of my questions. You admit that the
2 quality of life loan proceeds are really intended to provide
3 adequate working capital; correct?

4 A That's one way of looking at it, yes.

5 Q And I think you previously characterized it as a true
6 working capital facility; correct?

7 A That's correct.

8 Q And you admit that the title of the loan as a quality of
9 life loan is actually not the best choice of words; correct?

10 A You know, it's nomenclature. If you have working capital
11 to allow reinvestment in the city, that supports quality of
12 life.

13 Q Isn't it true that you have previously testified that the
14 title of this loan is probably not the best choice of words
15 because it should be called a working capital loan instead?

16 A From a banking perspective, that's what it is.

17 Q And you understand that under PA 436 it provides a
18 process for City Council to review and vote upon the post-
19 petition financing; correct?

20 A Yes.

21 Q And City Council also can develop its own alternative
22 proposal under PA 436?

23 A I'm sorry. I didn't hear that.

24 Q City Council can develop its own alternative proposal to
25 the post-petition financing?

1 A Yes.

2 Q But you did not personally meet with City Council;
3 correct?

4 A No.

5 Q And you don't know what documents City Council was
6 provided with; correct?

7 A No.

8 Q So you don't know if they were provided with the fee
9 letter?

10 A I don't know.

11 Q And you don't know if they were provided with information
12 relating to the market flex provision or the applicable
13 interest rates?

14 A I don't know.

15 Q And according to you, the reason these documents were not
16 provided to City Council is because you kept this very close
17 to people who really needed to know in order to ostensibly
18 protect the city's ability to raise the lowest cost
19 financing; isn't that right?

20 MR. CULLEN: Objection, your Honor. I believe she
21 just asked him if he knew what was provided. He said he
22 didn't know, and now she's asking him why something wasn't
23 provided. I think she's undermined the premise of her
24 question.

25 MS. GREEN: Your Honor, those are his words from his

1 deposition. I can pull out his deposition transcript. He
2 answered it at the deposition.

3 THE COURT: I'll permit it. Go ahead.

4 BY MS. GREEN:

5 Q Do you need me to rephrase the question or repeat it?

6 A Please repeat it.

7 Q According to you, the reason these documents were not
8 provided to City Council was because you were keeping it very
9 close to people who really needed to know in order to protect
10 the city's ability to raise the lowest cost financing;
11 correct?

12 A That's correct.

13 Q But you're aware, aren't you, that the Barclays
14 commitment letter expressly permits the commitment letter and
15 the fee letter both to be disclosed to City Council; correct?

16 A I don't know that.

17 Q Are you familiar with the Barclays commitment letter?

18 A I haven't reviewed it in quite some time.

19 MS. GREEN: Can we pull up City Exhibit 94, page 6,
20 paragraph 8, please?

21 BY MS. GREEN:

22 Q Sub 3 in that paragraph, I'd like to draw your attention
23 to that portion. Do you recognize this document, Mr.
24 Buckfire?

25 A I read it a long time ago. I haven't seen it recently.

1 Q All right. Do you see the portion where it says, "This
2 commitment letter and fee letter may be disclosed to the
3 extent required pursuant to applicable law, including any
4 disclosures required to be made to the city -- to the City
5 Council or any local emergency financial assistance loan
6 board pursuant to Michigan PA 436"?

7 A I do.

8 Q Okay. So you could have shared the fee letter with City
9 Council?

10 A Yes.

11 Q And you thought City Council didn't need to know the fee
12 and interest rate terms because you didn't consider City
13 Council to be a decision-maker; correct?

14 A That's correct.

15 Q And you used those terms even though you disagreed with
16 me that PA 436 actually requires City Council to vote on the
17 post-petition financing; correct?

18 A That's correct.

19 Q And compliance with PA 436 --

20 THE COURT: Ms. Green, would you slow down --

21 MS. GREEN: Yes. I'm sorry, your Honor.

22 THE COURT: -- your questions for me, please?

23 MS. GREEN: Standing order for me to slow down.

24 BY MS. GREEN:

25 Q Compliance with PA 436 is also a condition to closing

1 under the loan documents; correct?

2 A I believe so, yes.

3 Q And the Emergency Loan Board also has to approve the
4 post-petition financing under the terms of the loan; correct?

5 A That's my understanding.

6 Q But the post-petition financing documents were not
7 actually submitted to the Emergency Loan Board until November
8 6th; right?

9 A I don't know. I believe that's right.

10 Q And to your knowledge, the Emergency Loan Board has not
11 yet voted --

12 A That's correct.

13 Q -- nor has a date been set?

14 A That's my understanding.

15 Q And your understanding is also that the Emergency Loan
16 Board is actually waiting for this Court to rule first before
17 it will vote on the post-petition financing?

18 A That's my understanding.

19 MS. GREEN: I don't have any further questions, your
20 Honor.

21 MR. CULLEN: I don't have any questions, your Honor.

22 THE COURT: Stand by one second, please. I have
23 just a few questions for you, sir. I ask this. Are you
24 familiar with interest rate swap transactions generally?

25 THE WITNESS: I am.

1 THE COURT: Have you ever negotiated on behalf of
2 one party or another for an interest rate swap?

3 THE WITNESS: It's infrequent in my line of work,
4 but I have done it twice.

5 THE COURT: In the ordinary course of investigating
6 and negotiating an interest rate swap, do the parties
7 investigate the financial ability of the other party to pay
8 as required under the swap should it go that way?

9 THE WITNESS: Yes.

10 THE COURT: In your work for the city here, did you
11 investigate whether the city's swap counterparties in 2005
12 and 2006 investigated the ability of the city to pay should
13 interest rates go down as dramatically as they wound up
14 doing?

15 THE WITNESS: Right. We did not investigate that.

16 THE COURT: And it's your testimony that as a matter
17 of ordinary due diligence the swap counterparties would have
18 and should have performed that investigation; is that right?

19 THE WITNESS: Yes.

20 THE COURT: Do you have an opinion on whether the
21 obligations on the city that resulted from the dramatic and
22 longstanding reduction of interest rates contributed to its
23 need to file bankruptcy?

24 THE WITNESS: Yes.

25 THE COURT: What is your opinion?

1 THE WITNESS: Well, go back to the original
2 transactions, your Honor. When the city borrowed a billion
3 four to finance the pension plan, some of it was fixed --

4 THE COURT: To do what, sir?

5 THE WITNESS: They took the proceeds and put it into
6 the pension plans. A portion of it was fixed rate; a portion
7 was floating. But then for whatever reason in their business
8 judgment they put on a fixed rate swap, which converted the
9 entire thing to fixed rate, which eliminated any value they
10 would have otherwise received from a decline in interest
11 rates. That was a poor idea, and I don't know why they did
12 it, but the fact is that because interest rates then declined
13 so rapidly beginning in 2007, it put an enormous cash burden
14 on the city because the fixed rate, if I recall correctly,
15 was about \$50 million a year. When interest rates were much
16 higher, the net cash cost to the city was not 50. It would
17 be some fraction of that, call 10, but then when rates went
18 down, it became unsustainable. And, in fact, from 2007 to
19 2013, you know, it sucked hundreds of millions of dollars out
20 of the city for no real benefit.

21 THE COURT: So what's your answer to my question
22 about the extent to which it contributed to the bankruptcy?

23 THE WITNESS: I think it had a great deal to do with
24 the bankruptcy, your Honor, because of that loss of cash over
25 the intervening period of time and because after the

1 disastrous decision in 2009 to pledge their collateral, it
2 exposed the city to the loss of that collateral if they
3 defaulted, which, indeed, they did.

4 THE COURT: The city borrowed approximately how much
5 through the COP's?

6 THE WITNESS: Approximately a billion four, and they
7 took out 800 million initial amount against the underlying
8 securities on the swap.

9 THE COURT: What does that mean?

10 THE WITNESS: They had interest rate swaps on \$800
11 million of underlying debt. Sorry for using technical
12 jargon.

13 THE COURT: Did all of the proceeds go to the
14 pension funds?

15 THE WITNESS: Well, there's some dispute about that.
16 I don't have the facts in my head, but I believe that some of
17 it did not go to the pension funds.

18 THE COURT: Did you or are you aware whether anyone
19 investigated where the money went that didn't go to the
20 pension funds?

21 THE WITNESS: I believe that that's been looked at
22 by other consultants of the city. I do not know what the
23 result of their investigation is.

24 THE COURT: Has anyone else on behalf of the city,
25 to your knowledge, investigated whether the swap

1 counterparties knew the city would not be able to pay if
2 interest rates dropped as low and as dramatically as they
3 did?

4 THE WITNESS: I don't know.

5 THE COURT: All right. Any further questions for
6 the witness? All right. Sir, you may step down.

7 MR. ELLENBERG: Your Honor, may I ask a --

8 THE COURT: You may.

9 MR. ELLENBERG: If the Court please, Mark Ellenberg
10 on behalf of Bank of America Merrill Lynch.

11 CROSS-EXAMINATION

12 BY MR. ELLENBERG:

13 Q Good afternoon, Mr. Buckfire.

14 A Good afternoon.

15 Q Mr. Buckfire, when the city entered into a floating rate
16 bond, that left them exposed to fluctuations in interest
17 rates; is that correct?

18 A That's correct.

19 Q And had interest rates gone up, that would have
20 dramatically increased the cost to the city?

21 A Correct.

22 Q And so if they did nothing else, they would have, in
23 effect, been speculating on interest rates; is that correct?

24 A That's correct.

25 Q Now, the fixed rate swap -- I'm sorry -- the interest

1 rate swap that was entered into exchanged a fixed rate for a
2 floating rate?

3 A Correct.

4 Q And the city was paying the fixed rate under that swap?

5 A Yes.

6 Q And Bank of America Merrill Lynch or UBS was paying the
7 floating rate?

8 A Correct.

9 Q So the swap effectively transferred the interest rate
10 risk from the city to the two banks?

11 A Correct.

12 Q And what it did was fix the city's interest rate cost at
13 approximately five percent?

14 A That's correct.

15 Q And no matter which direction interest rates moved in,
16 the city's interest rate cost stayed the same. It was five
17 percent.

18 A That's correct.

19 Q So the fact that the interest rates, in fact, went down
20 did not change the deal the city struck. They struck a deal
21 to have a guaranteed five-percent interest rate associated
22 with those bonds?

23 A That's correct.

24 Q And so it was the synthetic equivalent of issuing fixed
25 rate debt?

1 A That's correct.

2 MR. ELLENBERG: Thank you.

3 THE COURT: Okay. Let's take our afternoon recess
4 now, and we will reconvene at 4:10. For your information, I
5 show the city has 274 minutes left and the objecting parties
6 378.

7 THE CLERK: All rise. Court is in recess.

8 (Recess at 3:48 p.m., until 4:10 p.m.)

9 THE CLERK: All rise. Court is in session. Please
10 be seated.

11 THE COURT: Looks like everyone is here. Before we
12 proceed with the next witness, I'd like to ask someone from
13 counsel for the city about this question that was raised
14 about approval by the loan board. Who volunteers?

15 MR. HAMILTON: I'll try it, your Honor. Robert
16 Hamilton of Jones Day on behalf of the city.

17 THE COURT: So the matter isn't to be submitted to
18 the loan board for its approval until after this Court gives
19 its approval?

20 MR. HAMILTON: No, your Honor. As Mr. Buckfire
21 testified on cross and as Mr. Doak will testify, we already
22 submitted it to the loan board in early November. It is our
23 understanding that the loan board will issue its -- whether
24 it approves it or not, it is waiting for this Court -- our
25 understanding is that it is waiting for this Court to issue

1 its ruling on whether it's going to approve the post-petition
2 financing facility before it issues -- before the loan board
3 issues its ruling. We expect that we would get the ruling
4 from the board promptly after this Court issues its ruling,
5 and it is a condition to closing.

6 THE COURT: Well, is there any chance that we're
7 wasting our time here?

8 MR. HAMILTON: Logically, that's a hypothetical
9 possibility. That's not our expectation. Our expectation is
10 that it will receive the board's approval once this Court
11 approves it.

12 THE COURT: Who's on this board?

13 MR. HAMILTON: I used to know the answer to that
14 question, and I have blocked it out of my mind. I can get
15 you that answer in just a second.

16 MR. ERENS: Apologize, your Honor. Brad Erens. I
17 did not previously provide an appearance, but I can answer
18 your questions. A couple things. First of all, there are
19 three members of the Emergency Loan Board. One is the
20 individual who previously provided the consent letter from
21 the Department of Treasury for this transaction to go
22 forward, so that individual was acting in a different
23 capacity with a different hat, but that is one of three
24 members who's already approved this transaction.

25 THE COURT: Who's that?

1 MR. ERENS: I don't believe I have the name, but we
2 do have as an exhibit the approval from the treasury.

3 MR. HAMILTON: Andy Dillon.

4 MR. ERENS: Okay. It was Mr. Dillon then. The two
5 other members of the loan --

6 THE COURT: He's still on the loan board even though
7 he has resigned as treasurer?

8 MR. ERENS: I don't believe -- I think he --

9 THE COURT: Is there something the matter, Letrice?

10 THE CLERK: Someone was speaking from the pod phone.

11 THE COURT: I'm sorry.

12 THE CLERK: Someone was speaking from the phone,
13 from the pod phone.

14 THE COURT: Oh, we can't have that.

15 THE CLERK: I'm just going to turn it down.

16 THE COURT: One second, sir. Okay.

17 MR. ERENS: Apologize, your Honor. It's my
18 understanding Mr. Dillon is still a member of the loan board
19 at least. And I'm not actually sure, while he has tendered
20 his resignation, if that's yet effective, although I'm not
21 sure. I think it may be effective at the end of the year or
22 sometime in January. In any case, the other two members --
23 and I don't have their names -- of the Emergency Loan Board
24 are gubernatorial at-will appointees, so the point of that is
25 that the administration has already expressed its support,

1 okay, for this loan, but --

2 THE COURT: Well, but why are they waiting?

3 MR. ERENS: Well, there's a couple of reasons, your
4 Honor. I think the technical legal reason is because the
5 liens that are being granted pursuant to this facility are a
6 creature of federal statute and your Honor's approval, and
7 the state has concluded that for them to approve the
8 transaction, those liens actually have to be in existence and
9 approved. They're not in existence and approved yet because
10 the way the Emergency Loan Board --

11 THE COURT: What's the point of their approval if
12 the liens are in place by the time they give their approval?

13 MR. ERENS: My understanding of the way they're
14 thinking about it is right now those liens don't exist, and
15 the way the statutes work, they have to approve the terms and
16 conditions of the financing, and until those liens exist
17 pursuant to a Bankruptcy Court order, there's nothing for
18 them to approve.

19 THE COURT: Did someone in the attorney general's
20 office give them this idea?

21 MR. ERENS: That I can't speak to. I'm not
22 obviously involved in the internal legal considerations of
23 the Emergency Loan Board.

24 THE COURT: Does this board have an attorney?

25 MR. ERENS: I'm not sure the board has an attorney

1 assigned solely to the loan board, but the board apparently
2 is advised by counsel to the state or state agencies.

3 THE COURT: Who?

4 MR. ERENS: I'm not sure, your Honor.

5 THE COURT: You get my concern.

6 MR. ERENS: Oh, absolutely.

7 THE COURT: What are we going to do about it?

8 MR. ERENS: Well, again, the Emergency Loan Board
9 has to meet. Okay. It has to make considerations. The
10 administration is in support of the transaction, as we know,
11 through the Department of Treasury letter, and we have every
12 expectation the Emergency Loan Board will approve the
13 transaction.

14 THE COURT: If it's a mere formality, fine, you
15 know, we'll proceed, but if there's any chance that they're
16 not going to approve this and we're wasting three days of
17 trial with really expensive lawyers --

18 MR. ERENS: Understood, your Honor. I guess I would
19 say the city is relying on a couple things, that one of the
20 three members had already approved it in a different
21 capacity, the administration is supportive of the
22 transaction, and that the other two members are at-will
23 appointees of the governor.

24 THE COURT: Well, all right. I'm going to ask for a
25 more complete report from Jones Day or an attorney for the

1 city on what the prospects are for loan board approval in
2 terms of how it perceives its role here, when it will
3 exercise that role, who's on the loan board because it's
4 unfair to everyone in this courtroom for us to be proceeding
5 for it just to be disapproved by the state's administrative
6 process after we're done, assuming it's approved.

7 MR. ERENS: Certainly understand, your Honor. I
8 guess I could say from the city's perspective, we obviously
9 would not be pursuing this court hearing if we didn't have
10 every expectation that it would be approved, but we are not
11 the Emergency Loan Board. So we will work on a full --

12 THE COURT: I want a report tomorrow morning.

13 MR. ERENS: Okay. Thank you. At the start of the
14 hearing?

15 THE COURT: If you can.

16 MR. ERENS: Okay. Thank you.

17 THE COURT: All right. Next witness, please.

18 MR. HAMILTON: Good afternoon, your Honor. Robert
19 Hamilton of Jones Day on behalf of the city. The city calls
20 James Doak to the stand.

21 THE COURT: Step forward, please, sir, and raise
22 your right hand.

23 JAMES DOAK, DEBTOR'S WITNESS, SWORN

24 THE COURT: Please sit down over there. You may
25 proceed.

1 DIRECT EXAMINATION

2 BY MR. HAMILTON:

3 Q Sir, can you say your full name for the record, please?

4 A James Leland Doak.

5 Q And, Mr. Doak, where do you live?

6 A I live in New Canaan, Connecticut.

7 Q And where are you currently employed?

8 A I'm currently employed at Miller Buckfire & Co., an
9 investment bank that is owned by Stifel Financial
10 Corporation.

11 Q Sir, did you get a degree from college?

12 A Yes, I did.

13 Q What was your degree in?

14 A I have a degree in social studies from Harvard College.

15 Q When did you graduate from Harvard College?

16 A 1994.

17 Q And did you pursue post-graduate work?

18 A Yes, I did.

19 Q What post-graduate work did you do?

20 A I received two degrees from Harvard University in 2000, a
21 JD from Harvard Law School and an MBA from Harvard Graduate
22 School of Business.23 Q Approximately how long have you had experience in the
24 investment banking industry?

25 A I've had over 15 years of experience.

1 Q Where did you start that experience?

2 A My experience started with the financial analyst program
3 at Goldman Sachs where I worked in the investment banking
4 division.

5 Q Where did you go after you worked at Goldman Sachs?

6 A After Goldman Sachs, I returned to the JD/MBA program,
7 and upon graduating from the JD/MBA program at Harvard
8 University, I took employment with Wasserstein Perella & Co.
9 and its restructuring group in 2000.

10 Q And at some point did that restructuring group become
11 what was -- what is now known as Miller Buckfire?

12 A Yes.

13 Q And have you worked at that restructuring group under its
14 prior name and as Miller Buckfire ever since?

15 A That's correct.

16 Q Okay. And what is your current position at Miller
17 Buckfire?

18 A I am a managing director.

19 Q And how long have you been a managing director at Miller
20 Buckfire?

21 A Approximately four years.

22 Q Okay. And so you've had then -- looks like if I total it
23 up right, about 13 years of experience at Miller Buckfire and
24 its predecessor; is that right?

25 A That's correct.

1 Q Okay. Can you describe for the Court what your
2 experience has been at Miller Buckfire in soliciting and
3 arranging financing and other capital transactions for
4 entities that are in financial distress?

5 A Over the last 13 years, I've worked on well over a dozen
6 engagements for borrowers, in some cases debtors, and
7 stakeholders around financially distressed enterprises and
8 other entities. At the core, if not the periphery of every
9 one of those situations, has been a process of soliciting,
10 marketing, amending or extending credit to distressed
11 entities. In some cases it was sourcing financing for a
12 borrower. In other cases it was sourcing financing for a
13 buyer, and in some cases it was negotiating, you know,
14 additional time on a credit facility with an existing set of
15 stakeholders.

16 Q All right. Can you describe just generally for the Court
17 what the process of soliciting and arranging a financing
18 facility for an entity in distress involves?

19 A The process of soliciting financing for an entity in
20 distress has several different phases that you have to take
21 into account. There's a considerable amount of planning
22 initially, and hopefully you have a fair amount of time to do
23 that. Sometimes you don't. But in that time, you have to
24 evaluate what the financial condition is of the entity, what
25 the markets look like as far as the markets that you're going

1 to go into, and determine, based on the financial condition
2 in the market, what type of process you believe is going to
3 best work, how broadly that process should go, who are the
4 key parties, who are the relevant markets and submarkets of
5 the debt capital markets that you should be going to, and you
6 have to work through that process design concept.

7 Once you have a sense of what your process design is
8 and you've prepared whatever materials you think are
9 necessary to introduce parties to the process, you begin
10 with, to the extent you can do it and you have the time, a
11 competitive solicitation process where you're informing
12 would-be providers of financing as to the nature of the
13 opportunity and the type of process that you are going to ask
14 them to participate in. From there you frequently have a --
15 anywhere from a very short period to an extended period of
16 due diligence and back and forth getting the lenders informed
17 of the overall process. At some point, depending on the
18 nature of the process and how robust it is and how much time
19 it is, you will ask for responses from the would-be providers
20 of financing so that you can make assessments as to how many
21 parties should continue on in the process and whether you
22 should have then one stage or multiple stages.

23 Eventually, you select key parties and best
24 financing providers to move on to final stages, and
25 eventually you engage in detailed negotiation with one or

1 more parties in order to get to a best possible outcome. All
2 along that process, depending on the nature of the situation,
3 there's also very critical elements here as far as keeping
4 the relevant stakeholders and decision-makers informed as to
5 how the process is going to go so that they're able to make
6 those decisions at key moments, and then depending on the
7 nature of the situation, there are other stakeholders around
8 the process that you're going to at least have to provide
9 some background recognizing how they may fit into the overall
10 transaction.

11 Q All right. And over the course of your 13 years at
12 Miller Buckfire engaging in this process, do you believe that
13 you have developed specialized knowledge in conducting such
14 processes?

15 A Yes.

16 Q Can you give the Court some idea of how you use that
17 specialized knowledge in conducting these processes?

18 A The specialized knowledge that someone gains from going
19 through multiple financing processes is -- allows one to
20 anticipate how a financing process will likely develop,
21 anticipate the reaction of would-be lenders and structure
22 both the process and also the invitation, introduction, and
23 information they'll be receiving so that the lenders will
24 best be able to absorb the information and provide productive
25 responses for you to run the process.

1 Another critical element from my years of experience
2 is the -- is learning how to interpret the signals and
3 massaging that one gets back from potential lenders, how to
4 interpret their questions when it comes to due diligence
5 calls, what they think is important, what they think is not
6 important, whether they're really interested or whether
7 they're less interested, how to interpret the written
8 submissions that they provide and whether they're complete,
9 what they leave in, what they take out, what they add, and
10 interpreting how the process is going to progress based on
11 how those letters look. Then as one moves along and engages
12 in detailed negotiation with parties and detailed dialogue
13 with parties, over the years you begin to get a better sense
14 of whether parties are -- you know, parties are negotiating
15 in earnest. Occasionally parties are negotiating to get out
16 basically of where they managed to find themselves, and you
17 have to learn who's -- which entities are really interested
18 in getting to the end point in a financing.

19 Q Mr. Doak, have you ever been qualified to provide expert
20 testimony on -- with respect to post-petition financing in a
21 bankruptcy case prior to this proceeding?

22 A Yes, I have.

23 Q On how many occasions?

24 A On two occasions in one particular bankruptcy.

25 Q Which case was that?

1 A That was the bankruptcy of Allied Holdings Corporation in
2 2006 through -- 2005 through 2007 in Georgia.

3 Q In which Bankruptcy Court was that?

4 A Maybe the Northern District of Georgia. It was the
5 courthouse in Atlanta. It was Ray Mullins' courtroom.

6 Q Okay. And what was the nature of your expert testimony
7 in that case?

8 A The nature of my expert testimony included the
9 superiority of a replacement debtor in possession facility
10 and extension of additional borrowings that occurred mid-
11 case, and then nine months later the replacement of the DIP
12 facility that was negotiated and approved with a convertible
13 DIP exit facility that was provided by another lender and the
14 superiority of that particular proposal at that time to allow
15 the company to emerge eventually from Chapter 11.

16 Q Did you also give expert testimony in the Lenox case?

17 A In the bankruptcy of the Lenox Group, which was in the
18 Southern District of New York, Judge Gropper's court, I
19 provided expert testimony in regards to the comparative
20 recoveries for stakeholders in two competing -- basically two
21 competing bids for the company.

22 Q All right. And when did your engagement with the City of
23 Detroit begin here?

24 A Miller Buckfire's engagement with the City of Detroit
25 began in January of 2013.

1 Q When did you start working on the matter?

2 A I began working at the inception of the engagement and
3 began working in October and November of 2012, which was the
4 time frame of the solicitation run by the city and the state
5 seeking financial advisors.

6 Q And during that period to date, have you had access to
7 the city's books and records in providing investment banking
8 services to the city?

9 A Yes.

10 Q And have you had access to the city's outside advisors
11 and the city's finance personnel?

12 A Yes.

13 MR. HAMILTON: Your Honor, at this time, I would
14 proffer Mr. Doak and ask him to be qualified as an expert in
15 soliciting and negotiating financing facilities for entities
16 in financial distress.

17 THE COURT: Any objections?

18 MR. ARNAULT: Permission to voir dire the witness,
19 your Honor?

20 THE COURT: Okay.

21 VOIR DIRE EXAMINATION

22 BY MR. ARNAULT:

23 Q Good afternoon, Mr. Doak. How are you?

24 A I'm fine. Thank you.

25 Q Good. My name is Bill Arnault, and I represent Syncora.

1 I just have a few questions for you about your background and
2 some of your qualifications. So to begin, you've only been
3 involved with one Chapter 9 case in your career; right?

4 A That's correct.

5 Q And that one Chapter 9 case is this one; right?

6 A That's correct.

7 Q And to the best of your knowledge, Miller Buckfire has
8 only been engaged on one occasion by an issuer to structure
9 and solicit municipal debt; right?

10 A There was an element of the -- our Foxwoods restructuring
11 assignment, which I worked on, where there was tax-free debt
12 that -- or tax-exempt debt that was in the municipal market,
13 so restructuring that and reissuing that was part of that
14 assignment, but this would be the only financing for a
15 municipality that I'm aware of that we've engaged in.

16 Q Okay. And the DIP loan at issue in this case is your
17 first attempt at sourcing and structuring municipal debt;
18 right?

19 A Yes. It's my first personal attempt at sourcing and
20 soliciting and structuring municipal debt.

21 Q It follows then that you've never attempted to source
22 unsecured financing on behalf of a Chapter 9 debtor; right?

23 A No, I have not.

24 MR. ARNAULT: Your Honor, we object to the offer of
25 Mr. Doak as an expert witness on the grounds that he lacks

1 the necessary qualifications in the Chapter 9 context to
2 testify about structuring and sourcing post-petition
3 financing.

4 MR. HAMILTON: I would say two things, your Honor.
5 One, there's got to be a first time for everybody, and nobody
6 is an expert by counsel's standard because this is really the
7 first contested municipal DIP that we're aware of. Second,
8 you've already ruled on this in connection with Mr. Buckfire
9 on this very same objection. We're not proffering him as an
10 expert on Chapter 9 finance. We're proffering him as an
11 expert on solicitation and negotiation of post-petition -- or
12 of financing facilities for entities in distress generally.

13 THE COURT: Well, we had a little more complete
14 record when we qualified Mr. Buckfire than we do for this
15 witness. For example, what, in your judgment, might form the
16 basis for any difference in the experience necessary to
17 properly represent a municipal debtor as opposed to a
18 commercial debtor in a Chapter 11 case who's looking for DIP
19 financing?

20 THE WITNESS: I think there are many elements of
21 similarity associated with sourcing of financing in this
22 context, and there are certainly many that differ. The
23 critical elements of similarity include the universe of
24 potential investors who are looking at this situation, how
25 they review any credit because there if it's not this, it's

1 Puerto Rico, but if it's not Puerto Rico, it's a Chapter 11
2 DIP financing, and if it's not that, it's a corporate
3 distress situation. They are focused on risk and return.
4 They're focused on plays on capital structures, and they're
5 focused on structuring, you know, maximum protection with
6 maximum return. And those elements that are present in the
7 corporate setting are present here as well. The other
8 critical elements that are similar are the essential nature
9 associated with planning of the overall process, doing the
10 analytics to understand what you should be asking for and
11 what sort of information you can provide parties in a time
12 frame to achieve a goal in an environment of extraordinary
13 information uncertainty. I mean that's what investment
14 bankers for distressed companies and borrowers and debtors,
15 you know, face on an everyday basis, and that's -- you know,
16 certainly here in spades when it comes to working through the
17 challenges associated with sourcing financing in an uncertain
18 operating prospect. There are certainly differences. There
19 are -- but, you know, the different -- here we have -- you
20 know, we have a different type of debtor, so the type of
21 remedies that parties are going to want is different. The
22 types of ways that the debt will get formally issued and
23 approved are going to be different, but that's going to be
24 the same if -- that sort of difference is the same if you
25 look at something with United States assets, and at the same

1 time it may have overseas assets, and so you have to get into
2 what sort of security interest you think you can really
3 provide people and whether you have to pledge stock because
4 you can't pledge assets, so, you know, I don't profess to be
5 an expert in Chapter 9, but the concepts here that we have
6 from Chapter 11 and, more importantly, just all around
7 distress and how you get rescues done, exits done, DIP
8 financings done, they're all very applicable to this
9 particular circumstance.

10 THE COURT: All right. The Court will qualify the
11 witness as an expert in sourcing financing in municipal
12 cases.

13 MR. HAMILTON: Thank you, your Honor.

14 DIRECT EXAMINATION (CONTINUING)

15 BY MR. HAMILTON:

16 Q Mr. Doak, what did you do starting in about May with
17 respect to the process of soliciting financing proposals for
18 the City of Detroit?

19 A At that time, recognizing that the city's liquidity was
20 very challenged and we had the potential of a Chapter 9 if
21 restructuring negotiations didn't proceed, we wanted to have
22 a better understanding of whether additional liquidity would
23 be available for the city both on a pre-petition basis or on
24 a --

25 THE COURT: Mr. Doak, I have to stop you. The

1 question was what did you do.

2 THE WITNESS: Okay. In May we determined it was
3 appropriate to contact several leading institutions to ask
4 them for their thoughts on whether financing would be
5 available for the city on both a pre-petition and post-
6 petition basis.

7 BY MR. HAMILTON:

8 Q How many did you contact?

9 A We contacted four institutions.

10 Q How did you decide which institutions to contact?

11 A We contacted leading institutions, large investment
12 banks, that we thought brought both municipal financing
13 expertise and also distressed situation expertise to the
14 table.

15 Q What were the four that you contacted?

16 A We contacted JPMorgan, Citibank, Wells Fargo, and
17 Deutsche Bank.

18 Q What did you tell them?

19 A We informed them that we wanted to have a preliminary
20 dialogue with them about some financing ideas associated with
21 the city and its restructuring process.

22 Q Did you meet with each one of those four?

23 A Yes, we did.

24 Q And what happened as a result of those meetings? What
25 happened with Deutsche Bank?

1 A With Deutsche Bank, we had a preliminary meeting, and
2 then subsequently they -- the dialogue with them did not
3 continue. It was a process that they weren't really -- there
4 wasn't enough information for them to respond to something or
5 provide a response, so they declined to continue the
6 dialogue.

7 Q What happened with Wells Fargo?

8 A Wells Fargo expressed a concern over the very high
9 profile nature of the overall situation and declined an
10 opportunity to continue a dialogue.

11 Q What happened with Citi?

12 A Citi -- we had a few more conversations, and eventually
13 when we sent an e-mail to them as well as the other three
14 asking for their best thoughts as to where -- their
15 interpretation of where we were in process and what might be
16 available, they submitted a written notice back to us.

17 Q And what did they say in that notice?

18 A They indicated that they were not --

19 MR. PEREZ: Your Honor, it calls for hearsay.

20 THE COURT: I'll permit it. Go ahead, sir.

21 THE WITNESS: Okay. The letter indicated that Citi
22 was not prepared to work towards extending credit to the
23 city. They expressed a concern about casino revenues and
24 lending based on casino revenues and cash flow capacity, and
25 they also expressed a general concern about the high profile

1 nature of Detroit and also the fact that there was swap
2 terminations involved in the process which they thought was
3 another bad sort of public element of the overall process.

4 BY MR. HAMILTON:

5 Q What happened with JPMorgan?

6 A JPMorgan also submitted a written response somewhat
7 lengthier than indicated that they were not willing to work
8 towards any sort of lending at this time, but they wanted to
9 be helpful or I think they -- we believe they wanted to be
10 helpful, so they extended some of -- they extended a letter,
11 and they provided some of their thoughts on how we could
12 potentially raise financing in the future.

13 Q Do experts in the field of restructuring finance
14 reasonably rely on such responses that -- such as the one you
15 got from JPMorgan Chase when you reach out for initial
16 expressions of interest?

17 A Yes, we do.

18 Q And you reasonably rely on those responses in forming
19 your opinion on what sources of financing are available to
20 your client?

21 A Yes, we do.

22 Q Okay.

23 MR. HAMILTON: At this point, your Honor, I'd like
24 to ask the witness about Exhibit -- City's Exhibit 61, and if
25 we could turn to what I believe everybody has identified as

1 the fourth page of the exhibit.

2 BY MR. HAMILTON:

3 Q Mr. Doak, is this the fourth page of the letter that you
4 got back from JPMorgan that you just described?

5 A Yes, it is.

6 Q All right. And can we -- I want to focus on the first
7 paragraph if we could blow that up. Could you explain to the
8 Court what the context is -- of the first two sentences of
9 that paragraph are as to what you had contacted or how you
10 had described to JPMorgan what you were looking for?

11 A We indicated to JPMorgan that we were examining whether
12 the debtor in possession financing would potentially be
13 available for the city as well as any other financing may be
14 available for the city recognizing we hadn't made a
15 determination yet on Chapter 9, so this is their recitation
16 back to us as to what they thought we had asked of them, and
17 they indicate here, I think, you know, appropriately, that we
18 were seeking potential debtor in possession financing should
19 we decide to restructure under court supervision. They then
20 outline that there's four distinct revenue streams that we
21 had identified to be used as security to secure any potential
22 lending facility.

23 Q What were the four revenue streams that you had
24 identified to JPMorgan Chase?

25 A The revenue streams that we had identified were the

1 casino gaming tax revenues, the income tax revenues, the
2 utility tax revenues, and also the water and sewer revenues.

3 Q Why had you identified the utility tax revenues and the
4 water and sewer revenues?

5 A The water and sewer revenues were identified because one
6 element of a potential DIP that we were exploring was whether
7 there was immediate interest savings that the water fund and
8 sewer fund could take advantage of with a debtor in
9 possession facility, so this would be refinancing existing
10 special revenue debt with lower interest rate special revenue
11 debt. The utility tax revenues we had identified because at
12 the time the city was in the process of raising the financing
13 for the public lighting authority, and that financing process
14 had stalled, so we wanted to know whether there was a way to
15 use what was already out there in legislation that the
16 utility taxes should go to a PLA debt vehicle and see whether
17 that could be incorporated into a debtor in possession
18 facility.

19 Q All right. Now, if we can go to the paragraph towards
20 the bottom of the page, the second paragraph under the last
21 heading, and blow that up, when you received this letter and
22 you read that paragraph, Mr. Doak, did that contribute to
23 forming your opinion on what type of financing would be
24 available to the City of Detroit?

25 A Yes, it did. It informed and also confirmed, you know,

1 our understanding that the city's access to financing on an
2 immediate pre-petition basis was simply not there and that on
3 a go forward basis it was going to be important to provide
4 security interests for any would-be lender to convince them
5 to provide the city with additional financing.

6 Q All right. At some point after the bankruptcy petition
7 for the City of Detroit was filed, did you become involved in
8 the process of soliciting and negotiating the post-petition
9 financing facility with Barclays?

10 A Yes.

11 Q All right. How would you characterize your role in that
12 process, Mr. Doak?

13 A I was one of the lead bankers at Miller Buckfire, if not
14 the lead banker at Miller Buckfire, working on the post-
15 petition financing process. My role extended from planning
16 the overall process, developing the initial solicitation
17 materials, developing the universe of potential lenders we
18 would contact to actually contacting those lenders, providing
19 them information, and assisting them in their substantive and
20 structural due diligence for the process.

21 Q How did you develop the list of parties to contact?

22 A We made the determination to solicit a broad range of
23 commercial institutions and alternative financing providers
24 that were active in providing credit to distressed
25 situations.

1 Q All right. At this time, I'd like to ask you, sir, about
2 what's been marked as City's Exhibit 56.

3 MR. HAMILTON: And it's my understanding, your
4 Honor, this has already been admitted into evidence earlier
5 this morning because there was no objection.

6 THE COURT: Which number, sir?

7 MR. HAMILTON: 56.

8 BY MR. HAMILTON:

9 Q Mr. Doak, what is this document?

10 A This is the introductory materials and e-mail that we
11 sent to Barclays. They received the materials on -- late on
12 Tuesday, September 3rd. That's approximately four days after
13 the bulk of the initial parties participating in the process
14 received their materials. The parties that received this had
15 executed a nondisclosure agreement so that they could receive
16 these materials, which included private information that was
17 not otherwise available in the debt capital markets, and in
18 this case, as with the others, Barclays received an
19 introductory letter describing the process, a model term
20 sheet for the financing that was designed by the city's
21 advisors and team, and also a copy of the executed swap
22 forbearance agreement. And at that time, we had not yet
23 completed the liquidity forecast that we wanted to use for
24 the financing. That was completed probably several days
25 later, so they and other parties received the forecast at

1 that particular time.

2 Q All right. And if you look at the last two pages of this
3 exhibit because it has attachments to it, is this the
4 introductory cover letter that's described in your e-mail to
5 Barclays?

6 A Yes. This is the cover letter that we sent to all the
7 parties who participated in the process and executed a
8 nondisclosure agreement, and you can see in this cover letter
9 we highlight both a check-in concept on September 6th and
10 also an initial deadline to provide us with an indicative
11 term sheet on September 16th.

12 Q And if you look at the second page of this exhibit --

13 MR. HAMILTON: If we bring that up -- no, the second
14 page -- just the second page of the exhibit, page after the
15 e-mail.

16 BY MR. HAMILTON:

17 Q What is this document, Mr. Doak?

18 A This is the indicative or model term sheet that we
19 provided to the potential sources of financing to provide
20 them with some sort of background and insight as to the type
21 of financing that the city was looking to source.

22 Q All right. And if you look at the second -- the next
23 page, page 2 and page 3 of this document, you'll see a
24 section down for collateral and priority. Do you see that?

25 A Yes.

1 Q And it indicates the collateral for both the swap
2 termination loan and the quality of life loan on the next
3 page; is that right?

4 A That's correct.

5 Q Why did you include this collateral package in the
6 indicative term sheet that you sent out to all 50 of the
7 potential lenders that you contacted?

8 A We provided this collateral package because it was --
9 after a substantial dialogue, we determined that unless we
10 provided the parties with some guidance as to what sort of
11 collateral arrangement the city thought it could possibly
12 agree to, we would get back from parties a very wide range of
13 responses.

14 Q Did you think there was a benefit to the city to
15 specifying what collateral the city was interested in
16 discussing in the initial package that was sent out to
17 lenders?

18 A Yes.

19 Q What is that benefit?

20 A Benefit was that it clarified the discussion with
21 parties. It focused them on what we felt was the key
22 provisions that we could deliver, and it also allowed us to
23 move the process along, you know, at the time frame -- within
24 the time frames that we felt we needed to hit in order to
25 secure the financing in time to address the forbearance

1 agreement.

2 Q What does that mean? What was the time frame -- how is
3 that relevant to what you were putting in the indicative term
4 sheet?

5 A This was the -- because this was the -- one of the first
6 if not the first post-petition financing for a municipality,
7 and even -- while we were dealing with very sophisticated
8 parties potentially looking at the financing, they -- we did
9 not have the time to attempt to educate and dialogue with
10 every one of them from ground zero as to what sort of
11 potential collateral arrangements we could provide and how a
12 potential post-petition financing facility could possibly
13 work, so it was helpful for us to provide this particular
14 guidance because we had concerns about, you know, what we
15 could receive back and find acceptable from the parties.

16 Q All right. And then can you describe just briefly and
17 quickly and generally what then occurred between -- in the
18 month of September after you sent out that package to the 50
19 potential lenders?

20 A We sent out the package to the 50 potential -- sorry. We
21 contacted 50 lenders. We sent out the package all told to
22 around 40 because that was the -- the parties had to execute
23 NDA's to receive the materials. We then engaged in calls and
24 other forms of communication with those potential parties
25 getting to September 16th, which was a key time frame for

1 potential parties to submit back to us their indications of
2 interest in providing financing for the city.

3 Q All right. And at this time I'd like to ask you, Mr.
4 Doak, about what's been marked as City's Exhibit 88.

5 MR. HAMILTON: If we could bring that up -- this one
6 is also already in evidence, your Honor, based on your ruling
7 this morning because there was no objection.

8 BY MR. HAMILTON:

9 Q What is this document, Mr. Doak?

10 A This was a briefing document that we created for the
11 benefit of the city's team of -- city's leadership and
12 advisors and also other key stakeholders who were
13 participating and monitoring the financing process, and --

14 Q Who did you provide this document to?

15 A This document was provided to Treasurer Dillon; the
16 director of the Michigan Finance Authority, Tom Saxton. It
17 was provided to Kevyn Orr and the emergency manager's office.
18 Jim Bonsall, the city's CFO, also received it as well as Gary
19 Brown, other members of the EM staff, and then the city's
20 advisor -- some of the city's advisors also had it.

21 Q Why did you provide it to State Treasurer Dillon?

22 A We provided it to State Treasurer Dillon because we
23 anticipated that his approval of a commitment letter would
24 probably be required as the process went along as well as
25 approval of the ELB over the course of the process, and by

1 providing him with the periodic updates, it would make
2 eventually coming to him for approval, you know, all the more
3 easier as it would be as far as bringing him in potentially
4 an extremely short time period. In addition, he's the -- he,
5 at the time, was the treasurer of the state. That gave him a
6 very broad knowledge of the municipal financing activities
7 that were taking place, you know, across the state with other
8 municipalities, and he brought that experience to the table,
9 as did Tom Saxton in his role as director of the Michigan
10 Finance Authority.

11 Q All right. If we go to the second page of this document,
12 it lists a number of different entities under the heading of
13 "Traditional." What does that mean, "traditional"?

14 A These are potential lenders who we categorized as
15 traditional financial institutions, commercial banks,
16 investment banks, and the like, entities that are regularly
17 in the business of extending and syndicating credit
18 facilities.

19 Q And if we turn to page -- or turn to the next page of the
20 exhibit, we now have a much longer list of entities under the
21 heading of "alternative." Can you tell the Court what does
22 "alternative" mean?

23 A This is -- that is short for the alternative financing
24 providers. The debt capital markets have changed
25 substantially over the last decade, especially around

1 distressed situations. Credit is now more frequently
2 provided by these nontraditional institutions whether they
3 are hedge funds or other sort of entities that aggregate
4 assets and spin them out into syndicated vehicles, but these
5 entities tend to work in different manners than the
6 traditional ones, and so we thought that this grouping would
7 be of assistance to the parties that we provided this to.

8 In addition, considering we had the EM and the
9 treasurer and the director of the finance authority,
10 "traditional" also meant, you know, entities that they had
11 most frequently spent more time with, right --

12 Q Okay.

13 A -- and "alternatives" were people more from our universe.

14 Q When you say "our universe," you mean the financial
15 restructuring universe?

16 A The financial restructuring universe.

17 THE COURT: Excuse me. I think it's in all of our
18 best interests to stop now for the day, so let's do that, and
19 we'll reconvene at nine o'clock tomorrow morning, please. I
20 do need to remind everyone that while you are free to leave
21 your boxes of exhibits or whatever you like here in the
22 courtroom, the courtroom will be locked. There will,
23 however, be other people in the courtroom, maintenance, IT,
24 housekeeping, et cetera, so it's at your own risk.

25 MR. HAMILTON: Thank you, your Honor.

1 THE COURT: We'll be in recess.

2 THE CLERK: All rise.

3 (Proceedings concluded at 5:00 p.m.)

INDEX

<u>WITNESSES:</u>	<u>Direct</u>	<u>Voir Dire</u>	<u>Cross</u>	<u>Redirect</u>
Gaurav Malhotra	26/39	35	86/104 106/112	119
Kenneth Buckfire	127		159/187 188/189 202/211	
James Doak	219/230	226		

<u>EXHIBITS:</u>	<u>Received</u>
City Exhibits 1, 2, 4, 5, 6, 7, 13, 18, 19, 30 47-54, 56, 78, 79, 80, 88, 89, 93, 98, 100, 112, 113, 116-139	9
City Exhibit 36 (pages 49, 50, 97, 98)	53
City Exhibit 61	155
City Exhibit 106	58
City Exhibit 108	68
City Exhibit 109	74
City Exhibit 110	75
City Exhibit 111	76
City Exhibit 115	83
Syncora Exhibits 201-214, 217, 223, 233-238, 240	9
FGIC Exhibits 301, 303, 307, 308, 309	9
Ambac Exhibits 401, 402, 403, 405, 406	9
EEPK Exhibits 801-805	9
Retirement Systems Exhibits 1012-1015, 1019	9
Sole Exhibits 1301, 1303, 1306, 1308, 1310, 1312, 1314, 1316	9
Sole Exhibit 1328	190
NPFG Exhibits 1, 2	9

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

December 23, 2013

Lois Garrett

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. December 20, 2013
Debtor. . 10:00 a.m.
.

HEARING RE. STATUS CONFERENCE
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

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Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 THE CLERK: All rise. Court is in session. Please
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 MR. CULLEN: May it please the Court, your Honor,
4 Thomas Cullen of Jones Day representing the city. As your
5 Honor strongly suggested, we have been meeting with the
6 various stakeholders over the past day. Accordingly and in
7 the interest of bettering the swap settlement, the parties in
8 interest are attending court-ordered mediation under the
9 mediation program that your Honor has established Monday and
10 Tuesday of next week, and Ms. Ball and Mr. Hertzberg will be
11 attending that mediation on behalf of the city's legal team.

12 If the city is, as it hopes, successful in bettering
13 the swap settlement, the city will promptly file an amended
14 motion setting forth the revised terms of its agreement and
15 bring that amendment before the -- that amended agreement
16 before the Court at your Honor's earliest convenience. With
17 the understanding that your Honor is unavailable until
18 January 2nd, the city will plan to produce Mr. Orr for a
19 deposition on December 31st in Washington, D.C., and will
20 make Mr. Orr available to testify at a continuation of this
21 week's hearing on the first date your Honor is available.
22 Mr. Orr will be, in such event, fully prepared to testify
23 with respect to the city's decision to enter into any such
24 agreement which results from this process.

25 At the same time and in the interim, we're doing, as

1 we're bound to do, whatever is necessary to protect the city
2 residents and interests and to preserve the city's ability to
3 take whatever course of action it ultimately deems necessary.
4 Indeed, the city, through Pepper Hamilton, is issuing
5 litigation hold notices to UBS, BAML, Orrick, Clark Hill, and
6 Lewis & Munday as well as to the COP banks with the intention
7 of preserving the city's ability to fully and completely
8 litigate its rights should an appropriate agreement not be
9 obtained. To the extent that the city determines that such
10 interests are best served by seeking preliminary or other
11 relief from this Court, the city will do so expeditiously.
12 That's all I have, your Honor.

13 THE COURT: Thank you, sir. Would anyone like to be
14 heard regarding this matter?

15 MR. MARRIOTT: Good morning, your Honor. Vince
16 Marriott, Ballard Spahr, on behalf of EEPK and affiliates. I
17 would just like to ask the debtor to confirm that it does
18 not --

19 THE COURT: Excuse me one second.

20 MR. MARRIOTT: Yes.

21 THE COURT: I just need you to listen to this.

22 MR. CULLEN: I'm very sorry, your Honor.

23 THE COURT: That's okay. Go ahead, sir.

24 MR. CULLEN: I apologize, Vince.

25 MR. MARRIOTT: That's fine. I would just like the

1 debtor to confirm that at any continued hearing on this
2 matter, it will be producing no witnesses that it has not
3 previously identified, no documents that it has not
4 previously produced other than any revised agreement.

5 MR. CULLEN: That is certainly our intention, your
6 Honor.

7 THE COURT: All right. Thank you. Would anyone
8 else like to be heard regarding this matter? No? It would
9 be the Court's intention -- yes. Yes or no?

10 MR. GORDON: Thank you, your Honor. Robert Gordon
11 of Clark Hill on behalf of the Retirement Systems. Number
12 one, the proposal that's been made, just for the record,
13 wasn't conveyed to any of us before just now, so we're trying
14 to process -- I don't know why an e-mail couldn't have gone
15 out last night.

16 THE COURT: Do you want a minute to process it?

17 MR. GORDON: Could we?

18 THE COURT: Absolutely.

19 MR. GORDON: I would appreciate that. I would like
20 to caucus.

21 THE COURT: Go right ahead.

22 MR. GORDON: Can we caucus for a moment because I'd
23 like to get some --

24 THE COURT: Well, all right. Fair enough. How much
25 time would you like?

1 MR. GORDON: Just five minutes even.

2 THE COURT: Ms. Green says five minutes. Okay.

3 MR. GORDON: Would that be okay?

4 THE COURT: On the safe side, we'll reconvene at
5 10:15.

6 MR. GORDON: Thank you, your Honor.

7 THE CLERK: All rise. Court is in recess.

8 (Recess at 10:04 a.m. until 10:15 a.m.)

9 THE CLERK: Court is in session. Please be seated.
10 Recalling Case Number 13-53846, City of Detroit, Michigan.

11 MR. MARRIOTT: Judge, the objectors caucused, and we
12 were in the process of sort of discussing with the debtor a
13 somewhat modified schedule. Maybe I'll let you know what we
14 were discussing. Apparently Mr. -- we had hoped that Mr.
15 Orr's deposition could be a day earlier than the 31st if the
16 hearing were going to start on the 2nd because of the
17 intervening holiday and the need to get a transcript and
18 review it and prepare. Apparently Mr. Orr is not available
19 any earlier than the 31st, so our next proposal was that
20 trial recommence, if it is to recommence, on the 3rd rather
21 than the 2nd. We don't know, frankly, whether it would
22 conclude the day it started because there's both witnesses,
23 and there is argument, and the debtor is -- has indicated a
24 reluctance to start on the 3rd if it meant we would not
25 finish until the following Monday, but it's the objectors'

1 view that we need at least a business day between Mr. Orr's
2 deposition and the commencement of the trial.

3 The other issue that we had which we did not have
4 the opportunity to raise with the debtor yet but I'll raise
5 now was a deadline by which if the debtor is going to file a
6 revised agreement that it be done so, and what we were going
7 to propose to the debtor was that it be noon on Friday, the
8 27th. They have not had a chance to react to that because I
9 had not communicated that to them.

10 And the third would be that if -- presumably I mean
11 I'll know because I'm in the mediation, but there are parties
12 who are not -- who are objectors that are not in the
13 mediation who will not know whether we come out of Tuesday
14 with a resolution or not, and the third suggestion would be
15 that the debtor communicate by close of business on Tuesday
16 whether it will be filing a revised motion by midday on
17 Friday. Those were our thoughts. We've communicated some of
18 them to the debtor but not all.

19 MR. CULLEN: Your Honor, our main objective here is
20 to get this done as quickly as possible, and if we could get
21 it all done on the 3rd, that would be -- that would be fine
22 with us, but we're -- you know, it's always at my back I hear
23 times winged chariot hurrying near for the city here.

24 And with respect to some indication of where we are
25 at the end of Tuesday, the world probably doesn't end if the

1 discussions leaked over or there were things to be done, so I
2 would -- the city would commit to give some kind of a status
3 at that time, and we will certainly --

4 THE COURT: All right. But on that I would ask you
5 to communicate to the attorneys who have appeared here in
6 connection with this proceeding but not by filing in the
7 court file.

8 MR. MARRIOTT: Yes, your Honor. That would be fine.
9 And in any notice that we give we will attempt to give them
10 sufficient information while not revealing the nature of
11 anything that should remain confidential is still --

12 THE COURT: Right.

13 MR. MARRIOTT: -- negotiable within the mediation.
14 With respect to the last date, it's certainly not
15 unreasonable to propose the 27th as an absolute drop dead
16 date. We'll certainly attempt to have it as soon as we can
17 possibly have it.

18 THE COURT: Okay. Regarding the hearing, it doesn't
19 feel likely -- it's possible, but it doesn't feel likely that
20 if we started on January 3rd we would conclude on January
21 3rd. How much of a problem is that? As far as I'm
22 concerned, we could continue to Saturday, the 4th. I don't
23 know about the availability of the building.

24 MR. MARRIOTT: I'm not allergic to Saturday, your
25 Honor, so that would be -- that would be fine with us as

1 well.

2 THE COURT: Anybody want to be heard about that
3 question?

4 MR. GORDON: Your Honor, again, Robert Gordon for
5 the record. If we had to pour over from the 3rd to the 4th
6 on that Saturday, we are amenable to that, so we were fine
7 with that suggestion.

8 If I may raise one other issue that was omitted in
9 the discussion here, but we had the discussion when we
10 caucused, the suggestion that Mr. Orr's deposition should
11 take place in Washington, D.C., where none of the creditors
12 are except for Ambac's counsel pretty much is, I would
13 suggest, offensive to some of us who are here in Detroit. He
14 is the emergency manager of the City of Detroit. They have
15 suggested this in the past, and we suggested that he should
16 be here, and we continue to suggest that he should be here.
17 He has accommodated us in the past. I don't think we should
18 all have to go to D.C., your Honor.

19 THE COURT: I wondered if you were going to bring
20 that up.

21 MR. GORDON: Yes, your Honor. Yes.

22 THE COURT: What's the issue with D.C.?

23 MR. CULLEN: We were, your Honor, trying to
24 calculate out the number of participants in this deposition
25 from various places, and we have a lot of New York, we have a

1 lot of Philadelphia, we have some Chicago, and we have one
2 cross-examining party from Detroit. And the witness has been
3 deposed in both places, Washington and Detroit, back and
4 forth. It just seemed to us in terms of the overall travel
5 budget of the matter that Washington was as convenient as any
6 other place for the counsel involved. If it's -- the world
7 doesn't end either way, but that was our thinking.

8 THE COURT: Thank you, sir. Anyone else besides Mr.
9 Gordon want to be heard on this?

10 MR. GORDON: I'll let Mr. Goldberg speak, but I just
11 wanted to clarify there's at least three parties in Detroit.
12 There are the retiree associations, there's Mr. Goldberg, and
13 there's the Retirement Systems, so there's at least three
14 here, your Honor. And, as I said, other than counsel for
15 Ambac, I don't believe any other counsel is in D.C.

16 MR. GOLDBERG: Jerome Goldberg appearing on
17 interested party, David Sole. I also find it offensive that
18 the emergency manager for the City of Detroit -- we have to
19 go to Washington to depose the representative for the City of
20 Detroit, and it's burdensome, and burdens are always
21 relative. I would submit that the burden on some of us in
22 Detroit is a little greater than the burden that it is on
23 some of these institutions that can afford it more, but more
24 important than that is the fact that he's representing
25 Detroit. He should be in Detroit.

1 THE COURT: I agree. His deposition should be in
2 the City of Detroit, and the Court so orders. From the
3 city's perspective, what's the problem with going over to
4 January 7th should January 4th -- I'm sorry -- January 6th --
5 what's the problem with going to January 6th should January
6 4th, a Saturday, not be feasible for the building?

7 MR. HERTZBERG: Your Honor, Robert Hertzberg, Pepper
8 Hamilton. It is -- I've been an active participant in this,
9 and I'm not available after that weekend for a week, so the
10 thought was if we started on the 2nd, we would easily be done
11 with the 2nd and with the 3rd available if the Court had that
12 scheduled. When it became a problem for the objectors that
13 they wanted one business day, the thought was if we pushed
14 over to the weekend. It happens to be my scheduling problem.

15 THE COURT: Well, all right. I will inquire of the
16 building regarding its availability on the 4th, but, frankly,
17 if I'm advised that it will create extraordinary expense for
18 the judiciary to turn the utilities on and have all of the
19 security services available, with all respect to Mr.
20 Hertzberg, we may have to go to Monday, the 6th. I certainly
21 agree with the objecting parties that with a deposition on
22 the 31st, it is not appropriate to start on January 2nd, so
23 with that one open issue, I think we are in agreement on
24 everything else. All right. I trust you'll work out the
25 time of your deposition. Anyone want to bring up anything

1 further at this time?

2 MR. MARRIOTT: Can I ask, Judge, where we ended up
3 on the filing of the motion if there's an amended motion to
4 be filed?

5 THE COURT: I heard that there was a commitment to
6 that.

7 MR. MARRIOTT: By Friday? I mean on Friday? Is
8 that --

9 MR. CULLEN: You said the 27th; right?

10 MR. MARRIOTT: Is that the 27th? Whatever the
11 27th --

12 MR. CULLEN: Yeah. Whatever you said, the 27th
13 seems sensible to us.

14 THE COURT: That's what I heard. Friday, the 27th.

15 MR. MARRIOTT: Okay.

16 THE COURT: All right. Thank you. We're in recess.

17 THE CLERK: All rise. Court is adjourned.

18 (Proceedings concluded at 10:25 a.m.)

INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

December 26, 2013

Lois Garrett

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
Debtor. . January 3, 2014
9:00 a.m.
.

EVIDENTIARY HEARING RE. MOTION OF THE DEBTOR FOR A FINAL ORDER PURSUANT TO 11 U.S.C. SECTIONS 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) APPROVING POST-PETITION FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY CLAIMS STATUS AND (III) MODIFYING AUTOMATIC STAY (DKT#1520)

MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER (I) AUTHORIZING THE ASSUMPTION OF THAT CERTAIN FORBEARANCE AND OPTIONAL TERMINATION AGREEMENT PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE, (II) APPROVING SUCH AGREEMENT PURSUANT TO RULE 9019, AND (III) GRANTING RELATED RELIEF (DKT#17)

CORRECTED MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE ASSUMPTION OF THAT CERTAIN FORBEARANCE AND OPTIONAL TERMINATION AGREEMENT PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE, (II) APPROVING SUCH AGREEMENT PURSUANT TO RULE 9019, AND (III) GRANTING RELATED RELIEF (DKT#157)

BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

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Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 THE CLERK: All rise. Court is in session. Please
2 be seated. Calling Case Number 13-53846, City of Detroit,
3 Michigan.

4 THE COURT: Good morning. One second, please.
5 Well, since it's a new day, let's put our appearances on the
6 record, please.

7 MR. SHUMAKER: Good morning, your Honor, and happy
8 new year. Greg Shumaker of Jones Day for the City of
9 Detroit.

10 MS. BALL: Good morning, your Honor. Corinne Ball
11 of Jones Day also for the City of Detroit.

12 MR. HERTZBERG: Good morning, your Honor. Robert
13 Hertzberg, Pepper Hamilton, on behalf of the City of Detroit.

14 MR. CULLEN: Good morning, your Honor. Thomas
15 Cullen of Jones Day on behalf of the City of Detroit.

16 MS. ENGLISH: Good morning, your Honor. Caroline
17 English from Arent Fox on behalf of Ambac Assurance
18 Corporation.

19 MR. ARNAULT: Good morning, your Honor. Bill
20 Arnault from Kirkland & Ellis on behalf of Syncora.

21 MR. MARRIOTT: Good morning, your Honor. Vince
22 Marriott, Ballard Spahr, on behalf of EEPK and affiliates.

23 MS. GREEN: Good morning, your Honor. Jennifer
24 Green on behalf of the Retirement Systems for the City of
25 Detroit and Robert Gordon on behalf of the Retirement Systems

1 as well.

2 MR. PEREZ: Good morning, your Honor. Alfredo
3 Perez, Weil Gotshal, on behalf of FGIC.

4 MR. GOLDBERG: Good morning, your Honor. Jerome
5 Goldberg on behalf of interested party David Sole.

6 MR. EATON: Good morning, your Honor. Jeffrey Eaton
7 on behalf of FMS from Schiff Hardin. Thank you.

8 MR. PLECHA: Good morning, your Honor. Ryan Plecha
9 on behalf of the retiree association parties.

10 MR. BENNETT: Good morning, your Honor. Ryan
11 Bennett of Kirkland & Ellis on behalf of Syncora.

12 MR. HAWKINS: Good morning, your Honor. Howard
13 Hawkins from Cadwalader on behalf of Bank of America Merrill
14 Lynch.

15 MR. SMITH: Good morning, your Honor. Edwin Smith,
16 Bingham McCutchen, on behalf of UBS AG.

17 MR. CLARK: And, your Honor, Jared Clark, Bingham
18 McCutchen, on behalf of UBS AG.

19 THE COURT: Are we ready to continue with the
20 witness' testimony?

21 MS. ENGLISH: Good morning, your Honor. Caroline
22 English from Arent Fox. If I could just raise one
23 preliminary matter before we get started this morning -- and
24 by the way, Mr. Hackney is not here regrettably today. He
25 does send his apologies to the Court that he can't be with

1 us. We, the rest of the objector counsel, will do the best
2 to fill his shoes. We did take Mr. Orr's deposition on
3 Tuesday, which was replete with a lot of substantive and
4 detailed new information that we received, and we just
5 received that transcript yesterday. We anticipate that today
6 his direct examination and cross will also contain a lot of
7 substantive and detailed information. The objectors would
8 like to request that in order to fully synthesize all of this
9 information and incorporate it into our closing argument
10 presentations, that we'd be able to do those presentations on
11 Monday. That would also give us the opportunity to get
12 organized among us, make sure we don't duplicate, and so
13 forth.

14 THE COURT: Is there any objection to that?

15 MR. SHUMAKER: Your Honor, we were hoping to
16 conclude today if that was possible given the time
17 constraints that your Honor had put on both sides'
18 presentation.

19 THE COURT: Sir, did you want to be heard on this?

20 MR. GOLDBERG: Your Honor, I also have a witness,
21 Wallace Turbeville, who I believe would be short testimony,
22 but he was not available today. He did come out and was
23 prepared to testify when the case was adjourned on December
24 18th. He could not be available today. He is available
25 Monday, and if it was possible to bring him, I think he

1 speaks to some of the substantive issues relative to whether
2 a factual predicate could be made on the issues of equitable
3 subordination.

4 THE COURT: Who is he, please?

5 MR. GOLDBERG: His name is Wallace Turbeville. He
6 was a former investment banker for Goldman Sachs, worked in
7 the derivative division, and we would ask to -- you know, we
8 would seek to qualify him as an expert and have provided an
9 expert report, and he has been deposed by the other side as
10 well.

11 MR. HERTZBERG: Your Honor, Robert Hertzberg. In
12 regard to Mr. Turbeville, we deposed him. It was a lengthy
13 deposition. I assume that the cross-examination by myself
14 and by the swap banks is going to be lengthy. If he is
15 brought in Monday, then we're going to probably need an extra
16 day then. I would suggest that he didn't show today. We all
17 made arrangements to be here today and that we planned on
18 concluding today, we're prepared to close, and that the
19 witnesses should not be allowed on Monday.

20 THE COURT: Let me ask you to step back to the
21 lectern, sir. I take it none of the other objecting parties
22 have witnesses, or let me just ask. Do you?

23 MR. PEREZ: Your Honor, Alfredo Perez. I don't have
24 any witnesses, but there are several exhibits that are self-
25 authenticating that I would want to put into the record.

1 THE COURT: Okay. No other witnesses except for
2 this one. Well, it really does impose upon everyone here
3 that he's not here today. As I previously indicated to you
4 or think I may have indicated to you, I'm not available
5 myself beginning on Tuesday of next week, so Monday was going
6 to be the last day. How long do you think your direct
7 examination of him would be?

8 MR. GOLDBERG: I don't think my direct would be more
9 than an hour. I can't speak to what their cross would be.
10 As they did say, I will acknowledge they did a very lengthy
11 deposition of him. I just was not able to produce him today.
12 I made an effort to, and I'm just asking -- you know, I
13 obviously respect whatever the Court, you know, deems. If I
14 could have brought him today, I would have. He did come out
15 previously and was prepared to testify.

16 THE COURT: Where is he from?

17 MR. GOLDBERG: New York.

18 THE COURT: Well, all right. Let's hold on all of
19 these questions and see what progress we do make here today,
20 and let's begin with the witness' -- or continue with the
21 witness' testimony.

22 MR. GOLDBERG: Thank you, your Honor.

23 MR. SHUMAKER: Thank you, your Honor. Again, Greg
24 Shumaker of Jones Day for the city. Your Honor, if I might
25 ask as a preliminary matter, does your Honor have a minute

1 tally?

2 THE COURT: I do. By my count, the city has 215
3 minutes left and the objecting parties 319.

4 MR. SHUMAKER: Wonderful. Thank you.

5 KEVYN ORR, DEBTOR'S WITNESS, PREVIOUSLY SWORN
6 DIRECT EXAMINATION

7 BY MR. SHUMAKER:

8 Q Good morning, Mr. Orr.

9 A Good morning, Mr. Shumaker.

10 Q Mr. Orr, when we were last together on December 18th, you
11 told the Court that you had received legal advice from your
12 lawyers at Jones Day and Pepper Hamilton while you and your
13 team were negotiating the forbearance agreement. Do you
14 recall that testimony?

15 A Yes.

16 Q Did they prepare legal analyses regarding the types of
17 claims that the city had against the swap counterparties or
18 the swap banks for you?

19 A Yes.

20 Q Did they prepare memoranda for you?

21 A Yes.

22 Q Did they prepare any complaints for you?

23 A Yes.

24 Q Were these memoranda and complaints in writing?

25 A Yes.

1 Q Did all of the legal advice that you received during the
2 negotiation of the forbearance agreement come in writing?

3 A No.

4 Q How else did you get legal advice from your team?

5 A Via e-mails and through telephone calls.

6 Q And when was this advice provided to you?

7 A Advice regarding the potential claims against the swap
8 counterparties was provided to me from the time immediately
9 after I was appointed throughout the time we were negotiating
10 the forbearance agreement.

11 Q So both before and during the negotiations of the
12 forbearance agreement; is that correct?

13 A Yes.

14 Q And in particular, who provided it to you generally?

15 A Generally, Corinne Ball at Jones Day as well as David
16 Heiman. I believe there was Joel Telpner in the New York
17 office and later Mr. Hertzberg from the Pepper Hamilton firm.

18 Q Were there any other firms that gave you advice?

19 A Jones Day, Pepper -- local -- city's long-time counsel,
20 Miller Canfield, was also involved.

21 Q Did this advice include the claims that the city might
22 have against the banks that were the swap counterparties?

23 A Yes.

24 Q With regard to the swaps and the COPs?

25 A Yes.

1 Q How about with regard to the pledge of the casino
2 revenues?

3 A Yes.

4 Q Were the claims that they address, that the lawyers
5 address, used to help negotiate the discounts that were found
6 in the original forbearance agreement?

7 A Yes, I believe so.

8 Q What were the arguments that the city was using to get
9 the discount percentages in the original forbearance
10 agreement?

11 A The city's --

12 Q Let me start with regard to the COPs and the swaps.

13 A Okay. The city's arguments generally centered around
14 theories that the underlying agreements, meaning the COPs and
15 the swaps, were void ab initio for a number of different sub-
16 theories and also that they had been fraudulently produced.

17 Q Let's start with the first there, the void ab initio
18 arguments. Could you describe for the Court the basis for
19 that claim, the legal basis, if you will, at first?

20 A Yes. It was my understanding that the legal basis for
21 the void ab initio claims was that the city did not have the
22 authority to enter into the underlying COPs, 2005 and 2006;
23 that, in fact, state law prohibited the indebtedness as well
24 as the fact that with regard to the swaps itself that they
25 were -- the revenue stream under state law was improperly

1 dedicated to pay them and that under state law these
2 underlying agreements were void ab initio.

3 Q Okay. You say state law. Do you recall which state law
4 was implicated?

5 A Yes. There was one argument that the Revised Municipal
6 Finance Act, Act 34 of 2001, was violated because the city's
7 structure in the 2005 and 2006 COPs was an attempt to do an
8 end-around that law by interposing the service corporations
9 and the service contracts.

10 Q What was the issue with the structure that was used with
11 regard to the COPs and the swaps?

12 A It was my understanding that Act 34 prohibited the city's
13 borrowing for a number of reasons. The city had reached its
14 debt limit at that time. It could not do the direct
15 borrowing because of the revenue stream used to pay, and so
16 the city created a structure whereby the service corporations
17 were put in between the city -- allegedly put in between the
18 city and the borrowing, and that supposedly dealt with the
19 issue under Act 34.

20 Q And what were the issues that were identified with regard
21 to the service corporations?

22 A There were issues surrounding the service corporations
23 through creation as independent companies and whether or not
24 that structure actually insulated the city from the
25 restrictions of Act 34, whether or not the service

1 corporations were acting independently or were merely an
2 instrumentality of the city in some fashion, and whether or
3 not they exercise independent judgment.

4 Q If the service corporations were not legitimate, what did
5 that mean legally? What was your understanding of what that
6 meant legally?

7 A It was explained to me, and it was my understanding that
8 if they were not acting legitimately, that the city was
9 essentially the borrower, and, therefore, the whole structure
10 fell, and, consequently, the underlying COPs were
11 inappropriate and unauthorized and they were void, of no
12 effect.

13 Q Now, did you conduct or have anyone conduct a factual
14 investigation into this claim --

15 A Yes.

16 Q -- this potential claim against the banks?

17 A Yes.

18 Q And who did you have undertake that investigation?

19 A Mr. Hertzberg and his team at Pepper Hamilton.

20 Q Anyone else?

21 A Jones Day initially was involved in an investigation. I
22 believe that -- Miller Canfield as well.

23 Q Now, what were the results of their factual
24 investigation? What do you recall were the results of that
25 investigation?

1 A Well, I recall that it was explained to me that there
2 were serious questions regarding the underlying indebtedness
3 and the structure of the transaction for the COPs; that there
4 were potential claims that the city could bring to invalidate
5 them in their entirety; that they could be void, not
6 voidable, and that there was a claim to be made that the
7 entire transaction would fall.

8 Q Let me ask you, going a little deeper there, what facts
9 did you learn about the service corporations that were
10 helpful or not so helpful?

11 A Well, it went back and forth. On the one hand, there
12 were facts that the service corporations were not truly
13 independent. There were city employees that were on their
14 boards and directors. It appears that they took instructions
15 from the city in one fashion. On the other hand, the service
16 corporations had been constructed, as I understood it, based
17 upon advice of counsel from Lewis & Munday. There were legal
18 opinions that actually analyzed the structure before it went
19 into place that said that it was valid and appropriate, an
20 qualified opinion that said that it would not violate Act 34.
21 The parties had apparently created it very carefully and very
22 meticulously based upon that legal opinion going forward. In
23 fact, the legal opinion as well as other facts mentioned that
24 service corporations were authorized by the Home Rule City
25 Act. The city had in place 21 service corporations in other

1 areas. In fact, throughout the state they had been used by
2 other municipalities, and so there was a balance between
3 whether or not this was an inappropriate use of the service
4 corporations or an entirely appropriate use of the service
5 corporations based upon the legal analysis of counsel back in
6 2004 and 2005.

7 Q When did you learn about the operations of the service
8 corporations?

9 A Well, I learned that the service corporations were there
10 principally to facilitate the transaction and that they met
11 all of the legal rules of having by-laws and articles, so on
12 and so forth. They were a little skinny on the operating
13 rules in terms of having minutes and board minutes and things
14 of that like, so while they were structured appropriately, it
15 was unclear that they were operating appropriately.

16 Q How about with regard to the City Council? Did they have
17 any involvement in the service corporations?

18 A Yes. There was a strong debate at City Council about the
19 appropriateness of the COPs. At the time in 2005 and again
20 in 2006 there were briefings. City Council actually approved
21 and authorized a transaction by City Council ordinance.
22 Despite those debates, the transactions went forward, both
23 2005 and 2006.

24 Q And after this investigation was conducted, what did you
25 view as the strengths of the void ab initio claim?

1 A I viewed that there were strong claims that the service
2 corporation structure was designed to circumvent Act 34 as a
3 matter of law and that there were serious questions about the
4 appropriateness of the swaps -- of the COPs and, therefore,
5 the swaps. I also understood that under the Home Rule City
6 Act, service corporations were specifically authorized. They
7 had been -- the structure had been created and it tracked
8 fairly closely the advice of counsel that had been given to
9 the city, city's long-time counsel at Lewis & Munday, several
10 opinions, as a matter of fact, that it was appropriate; that
11 the city, in fact, had borrowed \$1.44 billion to fund the
12 pensions, so they actually had gotten value in that
13 structure; and that despite some of the concerns about the
14 structure, specifically with the swaps, at least for the 2005
15 series, the city had made a profit. It made in the span of
16 eight months about \$40 million, tens of millions of dollars,
17 so that although the structure was questionable with regard
18 to the swaps, the city actually functioned and the city
19 actually made money.

20 Q And based upon all that you learned from the fact
21 investigation and from your lawyers, what did you view -- how
22 did you view the chances of success on the void ab initio
23 claim?

24 A The chances were debatable in that there were strong
25 arguments or arguments to be made that the service

1 corporations were inappropriate, but then there were clear
2 facts that they were authorized. They were approved by City
3 Council, authorized by state law, approved by City Council,
4 were authorized pursuant to the recommendation of unqualified
5 legal opinion of the attorneys, and the structure itself
6 actually performed, made money for the city. As a
7 consequence, I viewed the claims as more or less 50/50.
8 There were strong legal arguments, but there were also
9 countervailing factual arguments.

10 Q Let me ask you about the fraud -- potential fraud claims
11 that you say were identified. What was your understanding?
12 What was the basis for a potential fraud claim?

13 A Well, there were a number of legal theories that were
14 discussed under a potential fraud claim, but the general
15 basis was that the counterparties -- excuse me -- to the
16 swaps had superior knowledge than the city, and in designing
17 the transaction and making representations to the city that
18 the transactions were low risk, that they would be beneficial
19 and an adequate hedge against interest rate variability for
20 the city, that they knew or should have known that that was
21 inaccurate; that these were very potentially volatile
22 instruments, could expose the city to a lot of damages both
23 on the interest rates and that they'd designed more or less a
24 ticking time bomb into the structure; that by designing the
25 termination fee to be based upon the interest rate

1 fluctuation, but to also be linked to the potential credit
2 rating of both the COPs and the COPs' insurers, that if that
3 rating went down, it gave the counterparties the option to
4 declare a termination event and saddle the city with a very
5 large termination fee.

6 There was also a concern that the counterparties at
7 some of the times that were related to these transactions had
8 engaged in fairly well-publicized LIBOR price fixing. UBS,
9 in particular, had admitted impropriety in a multi-country, I
10 believe, settlement with Department of Justice, a U.K.
11 regulator, I believe a Swiss regulator as well; that some of
12 their offices around the world had engaged in inappropriate
13 LIBOR price fixing and that consequently the structure they
14 created -- there is an argument that they fraudulently
15 created it so that they could reap a profit from the city by
16 manipulating the LIBOR rate.

17 Q Did you have a factual investigation conducted into these
18 kinds of fraud claims?

19 A Yes.

20 Q And by whom?

21 A By the same attorneys, those at Pepper Hamilton, to an
22 extent Jones Day, Miller Canfield.

23 Q Was there anything specific to the city in terms of the
24 facts that concerned you regarding the city's relationship
25 with the swap banks?

1 A Yes, on both sides. On the one hand, here again, the
2 city's then chief financial officer that had very strongly
3 advised for the city to enter into these transactions
4 eventually took a job -- senior level job at one of the
5 counterparties; that some on the City Council had had a
6 strong debate --

7 THE COURT: Who was that, sir?

8 THE WITNESS: Pardon me, sir.

9 THE COURT: Who was that?

10 THE WITNESS: That was Sean Werdlow, your Honor, had
11 taken that position. The City Council -- some City Council
12 persons, in particular, had strongly opposed it. Eventually,
13 I believe, they passed it on a majority vote -- I believe it
14 was six to three -- and, in fact, had enacted two
15 ordinances -- or enacted an ordinance supporting it.

16 BY MR. SHUMAKER:

17 Q Do you know how the factual investigation was conducted?

18 A Well, I don't know the exact details of it, but my
19 understanding is that the attorneys pored over a number of
20 documents, went through a number of city records, looked over
21 a number of public filings to both examine the LIBOR scandal,
22 looked over United States filings. I believe there was some
23 investigation into Federal Reserve reports that compared, for
24 instance, at Bank of America its stated LIBOR rate that it
25 was making overseas as opposed to its Eurodollar rate that

1 was being reported here in the Federal Reserve and that there
2 was a difference. The two should track, but there was a
3 difference between the two, so my understanding was that the
4 investigation focused principally on a lot of documentation
5 and other federal records as well as the -- I'll call it a
6 plea agreement, but the agreement that was entered into with
7 the Department of Justice and the overseas regulators.

8 Q Based on what you learned from this investigation, what
9 did you consider the strengths and weaknesses of the fraud
10 claims to be?

11 A I considered there to be strong -- I say strong, but the
12 LIBOR bid rigging scandal with UBS and what appeared to be
13 involvement by Bank of America based upon the analysis of the
14 interest rate spreads was certainly an indication of a fraud
15 claim. On the other hand, the fact that the city had
16 approved the transaction, again, the swaps and the COPs
17 transaction; the fact that after their own investigation the
18 city's resistance -- they'd approved it on a six to three
19 vote, majority vote; the fact that here again they had
20 received legal advice as to the appropriateness of the
21 transaction and had passed an ordinance to approve it said
22 that the balance between the two raised serious questions
23 about whether or not you would prevail on a claim.

24 Q Was there anything that you recall that indicated that
25 the city may have benefitted from the swaps?

1 A Yes.

2 Q What was that?

3 A Well, it appeared that the city, as I said before, made
4 tens of millions of dollars on the swaps initially and, in
5 fact, on the contract it was paying out a great deal of
6 money, but there appeared to be some benefit to the city.

7 Q And when you say "initially," what time frame are you
8 talking about?

9 A 2005, 2006.

10 Q And based on all of this, what did you view the chances
11 of success on a fraud claim?

12 A Here again, I viewed -- while there were certainly
13 arguments that could be made going forward that the fraud
14 claim, unlike the ab initio, also was factually intensive,
15 there were facts, as with any claim, that we did not know and
16 would not know until we pursued litigation, sometimes costly
17 and expensive litigation that would take a long period of
18 time. There was certainly the risk that we would even have
19 to go overseas to potentially pursue some of the facts if we
20 were to litigate the question and incur the expense of doing
21 that, perhaps millions or tens of millions of dollars in
22 expense, and so on balance the thought was that certainly
23 these questions arose, and the conduct of UBS -- the admitted
24 conduct of UBS, in particular, and the -- what appeared to be
25 the conduct of Bank of America raised serious questions. The

1 issue of the factual analysis and the city's approval of the
2 transactions, again, raised questions about whether or not we
3 would ultimately prevail.

4 Q Now, you've testified before to the Court about what
5 we've referred to as the casino revenues. You recall that
6 testimony?

7 A Yes.

8 Q Did your advisors identify any claims relating to the
9 casino revenues?

10 A Yes.

11 Q And what were those claims?

12 A Under the state's Gaming Act, there was an argument that
13 the pledge of the casino revenue in 2009 to -- as collateral
14 for the COPs was inappropriate under Section 12 of the Gaming
15 Act. It was my understanding there were certain limited uses
16 of the gaming revenue -- approved uses by state law and that
17 there was an argument that to pledge it for collateral was
18 inappropriate.

19 Q Do you recall why it was inappropriate to pledge the
20 collateral in this manner?

21 A Yes. It was my understanding with counsel that there
22 were certain specified uses under the Gaming Act generally
23 for programs, street patrol officers, educational programs,
24 or improve the quality of life in the city; that it did not
25 specify the use of gaming revenue as collateral for an

1 unrelated debt.

2 Q Now, did your team conduct a factual investigation into
3 this particular claim?

4 A Yes, they did.

5 Q And who conducted that investigation?

6 A Here again, principally Pepper Hamilton, but Jones Day
7 and Miller Canfield were involved as well.

8 Q Could you share with us what the factual findings were of
9 that investigation?

10 A Yes. They found that there was questions raised about
11 the pledge of the casino revenue as collateral, but they also
12 found that there were another legal opinion by counsel that
13 it was an appropriate pledge of collateral and that the City
14 Council, I think, passed two ordinances with regard to the
15 2009 pledge, one finding that it was an appropriate use of
16 funds, another finding the legislative history behind it and
17 that, in fact, the pledge was designed to meet one of the
18 requirements under the Gaming Act. I don't remember the
19 exact section, but that it was an appropriate use to enhance
20 the quality of life for the citizens of the city.

21 Q Do you recall whether the factual investigation uncovered
22 any evidence that the state was aware of the pledge of the
23 casino revenues?

24 A Yes.

25 Q And what was that?

1 A There was a letter from the Gaming Board, state Gaming
2 Board, where the city had sent -- apparently had sent to the
3 state an explanation of the structure of the transaction, and
4 the state had written back saying that they didn't see any
5 problems with the structure or that the parties did not have
6 to apply for a license.

7 Q Based upon these facts and the legal arguments that you
8 were apprised of, how did you view the strengths and
9 weaknesses of this potential claim under -- relating to the
10 Gaming Act and the pledge of the casino revenues?

11 A Here again, there were arguments to be made that under
12 the plain language of the Gaming Act the pledge of the casino
13 revenue as collateral was inappropriate and unauthorized, but
14 there were also arguments to be made that based upon advice
15 of counsel, the City Council approving the transaction and
16 adopting two ordinances in connection with the transaction
17 attempting to specify why it met the requirements of the
18 Gaming Act, the state, having had an opportunity to weigh in
19 and point out inappropriateness -- any inappropriateness,
20 actually declined to do so and essentially approved the
21 transaction without the structure of it, without the actual
22 transaction itself, raised serious questions about whether or
23 not you would ultimately prevail.

24 Q Based on all that you learned, how did you view the
25 chances of success of such a claim?

1 A I felt that there were arguments to be made clearly that
2 the pledge of the casino revenue was inappropriate and was
3 fraudulently induced perhaps, but, on the other hand, there
4 were all these other factors which appeared to suggest that
5 the city and the organizers of the pledge took great pains to
6 make sure that it was appropriately structured and that
7 parties that had an opportunity to weigh in both at the city
8 and the state level to say that it was unappropriate did not.
9 In fact, they raised no concern.

10 Q Did you identify or did your team identify any other
11 claims relating to the casino revenues?

12 A Yeah. There were potential claims, without going into
13 the actual theories, surrounding the -- whether or not the
14 revenue was appropriately used.

15 Q Was there anything relating to how the casino revenues
16 might be treated under the Bankruptcy Code?

17 A Yes.

18 Q And what was that?

19 A Well, there was a discussion as to whether or not these
20 revenues would be classified as special revenues, and,
21 therefore, it is my understanding entitled to certain
22 treatment under the Bankruptcy Code as an after-acquired lien
23 and that the interest of the counterparties would continue
24 even after a petition date and have a security interest. I
25 believe in 1999, even before the current situation, the City

1 Council had passed an ordinance classifying casino revenue as
2 excise taxes, and there was an argument to be made that they
3 would qualify as special revenues.

4 Q Now, you pointed out that -- what the opinion said. I
5 take it that you had a factual investigation conducted in
6 connection with this claim; is that right?

7 A Yes.

8 Q And who conducted that investigation?

9 A Here again, that was conducted by the city's attorneys,
10 Pepper Hamilton, Jones Day, and Miller Canfield.

11 Q And what other facts do you recall relating to the claim?

12 A Here again, there was another legal opinion from a well-
13 known firm, Orrick, which specifically addressed the
14 bankruptcy question and found that -- I believe the statement
15 in one of the paragraphs of that opinion was that upon
16 briefing, a fact-finder would conclude that these qualified
17 as special revenues entitled to the protection in the
18 Bankruptcy Code. There was -- there were, as I said, the
19 ordinance before in 1999 and the city's behavior as if they
20 did qualify in that regard as excise taxes.

21 Q You say 1999. Could you --

22 A Um-hmm.

23 Q Could you be mistaken on the date?

24 A I think there was one -- I think I saw one City Council
25 ordinance. I could be mistaken on the date. I think it

1 was --

2 Q How about 2009?

3 A Maybe it was -- maybe it was two -- I'm sorry. Maybe it
4 was 2009.

5 Q Just wanted to be clear.

6 A Thank you.

7 Q Based on the factual investigation and what you learned,
8 how did you view the strengths and weaknesses of this claim
9 relating to whether the casino revenues qualified as special
10 revenues under the Bankruptcy Code?

11 A For all the arguments, again, that these casino revenues
12 were not special revenues under the Code, it was a little bit
13 involved, and I relied on counsel to a degree, but here we
14 had the advice of counsel, a legal opinion, strong legal
15 opinion again. At each of these stages, there were legal
16 opinions supporting the structure that went through the
17 rationale, their analysis that specifically the City Council
18 attempted to treat these casino revenues as excise taxes
19 unrelated to the emergency management or this bankruptcy.
20 This happened prior to that; that the parties appeared to
21 work very hard to try to create a structure that certainly
22 raised questions in everybody's minds, but they did at each
23 stage -- they did it very carefully and meticulously with
24 advice of counsel -- that there was a question whether or not
25 we would prevail.

1 Q Excuse me. After considering these strengths and
2 weaknesses and the facts that you were apprised of, how did
3 you view the chances of success of such a claim?

4 A I tried to balance the probability that on these claims
5 there'd be more factual investigation; that there were
6 certainly arguments that casino revenues did not qualify as
7 special revenues, but weighed against those arguments were my
8 understanding from counsel that excise taxes were
9 specifically included in the definition of special revenues
10 in the Bankruptcy Code and that the intent of the parties was
11 that the lien of the counterparties would continue even if
12 there was a bankruptcy event and that they relied on advice
13 of counsel to create the structure and also secure the
14 alleged security interest.

15 Q So aside from bringing these claims that you've
16 described, the void ab initio claims or the fraud claims
17 relating to the COPs and the swaps or the pledge or special
18 revenues arguments relating to the casino revenues, did you
19 consider taking any other courses of action in connection
20 with the swaps and the COPs or the casino revenues in the
21 May, June time frame?

22 A Yes.

23 Q And what were those?

24 A We considered, one, doing nothing, continuing the status
25 quo, but our projections showed that that was -- would be

1 fairly catastrophic to the city; that we were running out of
2 money.

3 Q I wasn't clear. What projections are you talking about?

4 A Cash flow projections that we would get from the
5 investment bankers and Ernst & Young. We considered
6 litigation, had to factor in the potential length of time and
7 the out-of-pocket expense of the city, which could be
8 millions of dollars per year, even tens of millions of
9 dollars in total as the years went on. I think there was
10 also a provision in the collateral agreement that if we did
11 not prevail we'd be responsible for the attorneys' fees of
12 the other side as well. We considered whether or not I could
13 exercise my authority under 436. There's a provision in 436
14 where I can invalidate contracts in and of themselves
15 administratively as the emergency manager and whether that
16 would be appropriate to revoke what were the -- they were
17 called the irrevocable letters of instruction both to the
18 casinos as well as to U.S. Bank as trustee, but the risk of
19 taking that course of action was that we would probably
20 create litigation anyway; that people would not stand by if I
21 sought to revoke those letters and inform the casinos and
22 U.S. Bank to start paying all the revenue directly to the
23 city, and we considered the risk of even some sort of
24 structured litigation just going after initial claims maybe
25 on a summary judgment motion but as well as full-blown

1 litigation going forward.

2 Q I'm sorry. You talked about the irrevocable
3 instructions. Could you elaborate on what the irrevocable
4 instructions were?

5 A Yes. It was my understanding in connection with the 2009
6 collateral agreement the city issued -- caused to be issued
7 irrevocable letters of instruction to the casinos that they
8 would pay the casino revenue to the trustee, and there was a
9 mechanism, which may have been discussed earlier -- a
10 mechanism that allowed a certain amount of money to be swept
11 on a daily basis and paid on the 1st to the city, then on the
12 15th paid into an account where the trustee would notify the
13 city typically at the end of the month that it had an
14 obligation to pay a certain sum, about \$4 million a month,
15 back into a holdback account, and then the trustee would
16 release the rest of the revenue for that month to the city,
17 and those letters of instruction instructed the casinos how
18 to participate in that mechanism. And there was another
19 letter -- letters of instruction which instructed the bank
20 that it was to continue this process, this structure,
21 until -- unless and until the counterparties authorized them
22 to stop, so that's why they were called irrevocable letters
23 of instruction.

24 Q Thank you. You indicated that you considered litigation.
25 Did you have complaints prepared during this time period?

1 A Yes, yes.

2 Q And by whom?

3 A Pepper Hamilton, Mr. Hertzberg's team.

4 Q Did you consider at any time talking to other third-
5 parties or agencies about what could be done about the COPs,
6 the swaps, the casino revenues?

7 A Yes.

8 Q What was that?

9 A I actually spoke with the Security and Exchange
10 Commission about the transaction and whether there was -- if
11 we were going to go into litigation, there was an opportunity
12 to have some federal investigation and prosecution.

13 Q Do you recall when you talked to the SEC?

14 A I don't. It was generally in this time frame. It might
15 have been later.

16 Q Now, you on the 18th previously testified that the
17 negotiations for the initial forbearance agreement took place
18 in late May through early June until an agreement in
19 principle was hammered out; is that correct?

20 A Yes.

21 Q And Mr. Buckfire was the lead negotiator for that effort;
22 is that right?

23 A Yes.

24 Q And Ms. Ball and other Jones Day lawyers were the lead on
25 the legal side; is that right?

1 A Yes.

2 Q To your knowledge, were the legal claims that you've
3 described this morning for the Court ever communicated to the
4 swap banks during the negotiations of the forbearance
5 agreement?

6 A Yes. It was my understanding that while the negotiations
7 had gotten heated in the June 10th through the June 14th time
8 frame on the business side with Mr. Buckfire and myself in
9 those days leading up to the June 14th presentation, that,
10 likewise, on the legal side for some time my attorneys had
11 been in pretty strong negotiations with the attorneys, I
12 believe, at Cadwalader representing -- and other firms
13 representing the counterparties.

14 Q Which attorneys on your team were doing that?

15 A Ms. Ball, Corinne Ball; David Heiman; I believe Joel
16 Telpner out of the New York office; and later Mr. Hertzberg.

17 Q Why did you have them do that --

18 A Well --

19 Q -- the claims to the swap banks?

20 A Well, we wanted to make sure that the counterparties were
21 aware we were prepared, if negotiations broke down, to pursue
22 litigation; that we had thought about the litigation; and
23 that we were not, in a sense, bluffing. If things did not
24 result in a settlement, we were going to have to pursue
25 litigation. We didn't have a choice.

1 Q Were you hoping that those -- the communication of those
2 claims would somehow affect the discount percentages?

3 A Yes.

4 Q Why was that?

5 A Well, my understanding was initially the counterparties
6 took a fairly strong position that they had a secured
7 interest.

8 MS. ENGLISH: Objection, your Honor. I believe
9 Mr. Orr is now starting to testify about what his attorneys
10 told swap counterparties in conversations and discussions
11 that he was not present at, so I have an objection on hearsay
12 grounds.

13 THE COURT: The objection is overruled. You may
14 proceed, sir.

15 THE WITNESS: It was my understanding that the swap
16 counterparties felt strongly that they had a secured
17 interest -- certainly that's what I experienced on the
18 business side -- and that this whole structure had been
19 vetted and approved by all parties at the time it was entered
20 into and that parties had been performing for years under it
21 and that they felt they had a strong legal position. And we
22 wanted to make sure that they understood that we felt,
23 despite the performance of the parties and the legal opinions
24 and approvals before, that we believe there was an
25 opportunity for us to litigate that issue and perhaps

1 undermine the security interest.

2 BY MR. SHUMAKER:

3 Q Now, if the city had filed those claims, there were
4 significant upsides for the city; correct?

5 A Yes.

6 Q What were those upsides?

7 A The upsides were as great as invalidating the entire
8 transaction, recovering all payments that had been made over
9 those years, particularly under the swap contract going
10 forward and perhaps even recovering damages.

11 Q And you said invalidating the swaps. What would that
12 have meant for the city?

13 A Well, it would have gotten the city out from under the
14 termination fee risk. It would have released the lien on the
15 casino revenue. It perhaps would have allowed the city to
16 recover tens of millions or hundreds of millions of dollars
17 in the payments that it made throughout the life of the
18 swaps.

19 Q Were there downsides to pursuing litigation?

20 A Yes.

21 Q What were they?

22 A The downsides were if we did not prevail that the swap
23 contract, for instance, would have been validated. The city
24 would have had an obligation and a termination event
25 because -- my point was a termination event -- there are a

1 number of other termination events -- that they would have
2 had an immediate obligation to pay hundreds of millions of
3 dollars to the swap counterparties. We would have incurred
4 the litigation expense, out-of-pocket expense of that
5 litigation. We would have had an obligation to pay the
6 litigation expense perhaps of the counterparties as well and
7 that, more importantly, frankly, from the city's perspective,
8 the single largest most secure source of revenue for the city
9 would have been imperiled, and we would have not had
10 stability in the city's finances or an ability to both plan
11 operationally strategically for the city or in any other
12 manner.

13 Q Did you have any understanding of how long it might take
14 to pursue this kind of litigation?

15 A Yes, generally. With most litigation it's -- someone
16 said about war, you know, the best laid plans go to "H" after
17 the first shot, and with litigation you can have strategies
18 and plans in place, but litigation sometimes takes on a life
19 of its own despite what you think you're going to do, so part
20 of the risk that I was trying to assess with the advice of my
21 counsel was if we pursued it, what was the probability that
22 we were going to be able -- the likelihood that we were going
23 to be able to stabilize the city's finances during the course
24 of litigation.

25 Q You mentioned the potential cost of such litigation.

1 What was your understanding of how much it might cost and
2 based on what?

3 A Well, suffice it to say that the counterparties are
4 sophisticated counterparties with excellent legal counsel.
5 They have the finances and the wherewithal to fund litigation
6 to defend. They certainly have the ability to pursue
7 defenses and perhaps claims against the city. The city would
8 be up against a well-financed adversary or adversaries. The
9 cost to the city, while they were estimates, could be a
10 million dollars a month on average. Even half a million a
11 month was somewhere between six to \$12 million a year to the
12 city. If they prevailed, in addition to the termination fee,
13 we'd have an obligation to pay those legal fees. If it went
14 over for a period of years, those years were years that we
15 would not be able to use a portion or maybe some of that
16 revenue to stabilize the city's finances or to get to the
17 reinvestment and reform that we're trying to get to now. We
18 certainly would not be able to push out a plan of reinvention
19 for the city during this time if the litigation didn't stay
20 the trap of the casino revenue.

21 Q Did you consult with your lawyers regarding how much the
22 litigation might cost?

23 A Yes.

24 Q How about the duration of litigation? Did you discuss
25 that with your lawyers?

1 A Yes.

2 Q What would happen -- what would the consequences be if
3 the city lost on the legal claims you've described?

4 A The consequences would be quite severe. The casino
5 revenue approaches \$200 million on a billion dollar budget.
6 Our tax revenue we hope to maintain at a steady state, but 20
7 percent of the city's budget could go away. If that happened
8 to the city, you could not cut enough services. The city is
9 down from a high in 2000 of roughly 22,000 FTE's to about
10 9,600. You can't cut -- you can't cut any more to make up
11 \$200 million in losses.

12 Q Does the forbearance agreement or the agreement that
13 you're asking the Court to approve, does it settle the legal
14 claims that you've described here this morning against the
15 swap banks?

16 A Yes.

17 Q If the forbearance agreement is not approved, do you
18 understand what will occur vis-a-vis the parties? When I say
19 "the parties," I mean the city and the swap banks.

20 A Well, the parties revert back to the status quo prior to
21 the forbearance agreement, and the city remains at risk of
22 a -- of having to deal with a termination event payment.

23 Q Now, do you recall when you signed the initial
24 forbearance agreement?

25 A Yeah. Approximately back some time ago, in June, I

1 believe.

2 Q June or July?

3 A July, yeah. I believe it was July, yeah.

4 Q And do you believe that that forbearance agreement was in
5 the best interest of the city?

6 A Yes.

7 Q On December 18th, you were initially testifying about
8 that forbearance agreement that was executed in July, and you
9 explained the discount percentages to the Court. Do you
10 recall that?

11 A Yes.

12 Q Do you recall the range of 75 to 82 percent? Does that
13 sound familiar?

14 A Yes.

15 Q At the Court's suggestion, you reopened negotiations with
16 the swap banks in connection with mediation; correct?

17 A Yes. We were ordered to mediation.

18 Q Did you discuss the potential legal claims that the city
19 might have against the swap banks with your counsel before
20 these renegotiations?

21 A I discussed them before the renegotiations and during the
22 mediation.

23 Q Did you share or explain these legal claims with the
24 mediators?

25 A Yes. Generally, yes.

1 Q And why did you do that?

2 A The mediation is confidential, but I did that to relay --
3 we did that in the room to relay to the mediators that we
4 felt, here again, that there were arguments to be made
5 against the swap counterparties and their interest and to
6 make sure they understood that, you know, we -- in these
7 renegotiations there were reasons -- good reasons for us to
8 renegotiate the percentages that we originally agreed to.

9 Q How were the negotiations conducted in the course of the
10 mediation?

11 A There was one plenary session for five to ten minutes on
12 the morning of the 23rd. Then the parties -- each of the
13 groups, the city, the counterparties, I assume -- I didn't
14 see them go into a separate room, but I assume the insurers
15 and some of the creditors went out into separate breakout
16 rooms. The mediators would shuttle back and forth between
17 the parties during the day.

18 Q Did you negotiate the new agreement directly, or was that
19 done by the mediators?

20 A That was done by the mediators.

21 Q And a new agreement was reached; correct?

22 A Yes.

23 Q And what -- if you will, could you share the terms of
24 that new agreement with the Court?

25 A Yeah. The substantive terms essentially mean the same.

1 The number for the termination fee payment went down to a
2 whole number of \$165 million.

3 Q Now, I'd like to show you Exhibit 141 if I could. Well,
4 let me --

5 MR. SHUMAKER: Before you put it up -- before you
6 put it up -- your Honor, this is the sixth amendment to the
7 forbearance agreement. It has not been admitted into
8 evidence, so I don't want to show the witness yet. And I'm
9 not sure whether the objectors have any objection to its
10 being admitted into evidence.

11 THE COURT: Are you offering it?

12 MR. SHUMAKER: Yes, your Honor, we are.

13 MS. ENGLISH: We have no objection.

14 THE COURT: All right. Exhibit 141 is admitted.

15 MR. SHUMAKER: Thank you, your Honor.

16 (City Exhibit 141 received at 9:55 a.m.)

17 BY MR. SHUMAKER:

18 Q Mr. Orr, could you take a look at Exhibit 141 there and
19 tell us whether you recognize that document?

20 A Could we --

21 MR. SHUMAKER: Can you flip to the next page, too,
22 Steve --

23 THE WITNESS: Next one.

24 MR. SHUMAKER: -- and the next one?

25 THE WITNESS: And the next one.

1 THE COURT: And one more. Okay. And there may be
2 another one.

3 THE WITNESS: Yes.

4 MR. SHUMAKER: Okay.

5 THE WITNESS: Okay. Yes. I recognize the exhibit.

6 BY MR. SHUMAKER:

7 Q Okay. And what is it?

8 A It's the sixth amendment to the forbearance and optional
9 termination agreement.

10 Q Okay. And, again, you talk that -- talked about this
11 agreement having a new number and new terms. Can you share
12 with the Court or summarize for the Court what the terms are
13 of this sixth amendment?

14 A Yeah. Generally the terms remain the same. It reduces
15 the amount of the termination fee payment by \$65 million to a
16 whole number -- set number of \$165 million, and it extends
17 the time to execute on the agreement until, I believe,
18 further down, January 31st, 2014.

19 Q Now, the new number is a fixed number, as you say;
20 correct?

21 A Yes.

22 Q Why was a fixed number negotiated when the prior
23 agreement, which is in the original forbearance agreement,
24 that was based on discount percentages? Was that done?

25 A The original agreement was negotiated at arm's length

1 bilaterally between the parties, and the general concern was
2 that there be a percentage reduction to allow the interest
3 rate float to occur in the agreement but based on percentages
4 so that the parties at some way were still bound to the
5 benefit of their bargain, what they had negotiated. During
6 the course of the day in the mediation, we at the city
7 decided that it was best that we were going to try to finally
8 bring this to a close, that we not be subject to market rate
9 fluctuations and that we get to a set number so that that
10 number is firm irrespective of whether interest rates go up
11 or interest rates go down, that we have a firm number that we
12 can plan on and that we can adjust, and the mediators in the
13 afternoon came back to us and said that was the best possible
14 result we could achieve is going to a whole number.

15 Q Could you -- and the whole number was 165 million?

16 A Yes.

17 Q How did you -- could you explain to the Court how that
18 figure was arrived at?

19 A Yes. We sat in a room for several hours during the
20 morning. The mediators came in, Judge Perris, Judge Rosen,
21 late morning, asked us what we thought would be a fair
22 number. We gave it to them. Several hours passed. I think
23 we broke for lunch. They came back again that afternoon and
24 said that we weren't going to be able to achieve the number
25 that we wanted based upon their discussions with the

1 counterparties and that the best number -- I'm not sure they
2 gave us all the reasons, but the best number we could hope to
3 achieve was roughly \$165 million. There was some discussion
4 about whether or not that would be a fixed number or we would
5 have a percentage. We called our investment bankers to try
6 to get some idea about what market interest rates were doing
7 and what the trend might be during the course of the coming
8 weeks. We initially rebuffed that number. I believe the
9 mediators came back in and strongly suggested that was the
10 best number we were going to achieve in this process or we
11 were headed to perhaps months if not years of litigation. We
12 counseled amongst ourselves, said we would accept the number
13 but only as a whole number, only as a fixed rate. Towards
14 eight o'clock at night the mediators called us into a room
15 with the counterparties on the other side to make sure
16 everybody understood that we were dealing with a fixed
17 number, this was going to be a net to the city and that that
18 was the final agreement.

19 Q And what was your initial proposal to the mediators for
20 the banks?

21 A Our number?

22 Q Yeah, the initial range.

23 A Initial range was 145 to 150 million.

24 Q And that's the number you did not -- were not able to
25 get?

1 A Yes.

2 Q Do you believe that the new agreement is a better
3 agreement for the city?

4 A Yes.

5 Q Why?

6 A It's \$65 million less than the original agreement, which
7 is significant to the city. We will reduce the post-petition
8 financing requests that we have from our -- for our lenders
9 as a consequence. That's less debt to the city. It reduces,
10 again, for all the reasons before -- our interest expense is
11 based on an \$800 million notional amount in the original
12 document. It reduces to the actual interest of this amount
13 of the post-petition financing. It finally resolves this
14 issue, the whole sordid tale of the swaps, once and for all.
15 It relieves us of potential litigation expense as well and
16 actually reduces our interest carry from roughly 50 million a
17 year to somewhere in the neighborhood of 15 to \$16 million a
18 year depending upon what eventually we get, and it provides
19 us, more importantly with the city, an opportunity to finally
20 do some reasonable strategic planning based upon a certain
21 revenue stream for years to come so that we can get to the
22 reinvention plan that we're trying to push out.

23 Q So do you believe this new improved agreement is in the
24 best interest of the city?

25 A Yes.

1 Q I want to ask you a few questions about the post-petition
2 financing. When you signed the forbearance agreement, the
3 initial forbearance agreement, in July, the city did not have
4 the money needed to finance the deal; correct?

5 A Yes.

6 Q All right. And how does the city propose to pay the 165
7 million that you've just described?

8 A We're going to borrow it.

9 Q And back in the time that the post-petition financing was
10 being solicited and negotiated, what was your involvement in
11 that process?

12 A After we entered into the agreement in principle and the
13 first forbearance and optional termination agreement, I
14 instructed our investment bankers to canvass the marketplace
15 to see what terms and availability was out there in the
16 capital markets for a loan to the city. They'd actually done
17 some of that already.

18 Q What were your instructions to your team?

19 A To get the best deal that we could from the capital
20 markets.

21 Q And who was your team?

22 A It was principally Ken Buckfire and Jim Doak of Miller
23 Buckfire.

24 Q And what did you consider to be the most important
25 factors in the financing to you in selecting a lender for the

1 city?

2 A Lowest rate possible, overall rate under any set of
3 circumstances, certainty of lending, the ability of the
4 lender to actually come through without any ancillary or
5 other risk, pretty straightforward transaction, didn't want
6 any exotics or any significant conditions in the agreement
7 that could create a change in the structure of the
8 transaction, and the ability to close fairly quickly.

9 Q Did you give any instructions to Mr. Buckfire, Mr. Doak,
10 or anyone on your team regarding whether the financing should
11 be secured or unsecured?

12 A Yes.

13 Q And what were those instructions?

14 A We initially discussed whether we could obtain
15 unsecured -- the financing in an unsecured capacity as a
16 loan. They had canvassed some of the lenders -- potential
17 lenders in the capital markets and came back with a report
18 that that was unlikely.

19 Q I'm sorry. Did you indicate what -- did you tell us
20 what -- why they believed that --

21 A Yes, yeah.

22 Q -- your understanding as to why they --

23 MR. MARRIOTT: Objection, your Honor. This is
24 hearsay testimony. Mr. Doak and Mr. Buckfire have already
25 given testimony on precisely this point. We know what they

1 thought. We know why they thought it.

2 THE COURT: The objection is overruled. Go ahead,
3 sir.

4 THE WITNESS: Yes, sir. Mr. Doak and Mr. Buckfire
5 told me that the reality is we're in bankruptcy. We're a bad
6 credit risk. We've been defaulting. Our credit rating has
7 been driven down and that nobody is going to lend to us
8 without some form of security interest.

9 BY MR. SHUMAKER:

10 Q Did you review any reports from Miller Buckfire during
11 the solicitation process?

12 A Yes.

13 Q I'd like to show you a document, Exhibit 88, please, and
14 ask you, Mr. Orr, is that document familiar to you?

15 A Yes.

16 Q And what is it?

17 A This is one of the initial documents regarding post-
18 petition financing discussion that was generated by Miller
19 Buckfire.

20 Q Was it prepared for your review?

21 A Yes. For me and the entire team, yes.

22 Q I'd like to take you to --

23 MR. SHUMAKER: This document, your Honor, is already
24 in evidence.

25 BY MR. SHUMAKER:

1 Q -- page 5, if you will.

2 MR. SHUMAKER: Steve, if you could go -- page 5 of
3 the document.

4 BY MR. SHUMAKER:

5 Q Do you see that page, Mr. Orr?

6 A Yes.

7 Q And up at the top it says "Post-petition financing all-in
8 cost analysis." Do you see that?

9 A Yes.

10 Q What did that mean to you when you read it?

11 A This was a comparison of the potential lenders and what
12 all-in costs if you put in the amount of the loan, if you put
13 in any fees, if you put in any variability between the
14 interest costs for the swap termination loan versus the
15 quality of life loan and whatever other fees any of these
16 lenders were proposing, what that total cost could be, the
17 exposure to the city.

18 Q You see the -- at the top of the columns across the page
19 the names BAML, Barclays, Goldman, CarVal, Fundamental,
20 Jefferies. What were those -- what were those names?

21 A These are all the names of the potential lenders that
22 responded to a solicitation, I believe. The solicitation had
23 gone out previously and had gotten somewhere in the
24 neighborhood -- I think they sent out approximately 50
25 solicitations. They got roughly close to three dozen

1 responses. They had gone through the responses and tried to
2 pull out the handful of best responses that they had
3 received.

4 Q And what did this show you? What did this page show you?

5 A This page showed that considering all the potential
6 lending and the various factors that went into lending that
7 Barclays was the cheapest money.

8 Q Okay. And at the bottom half of the middle box there,
9 you see two rows. One, it says difference from lowest all-in
10 rate and difference from lowest all-in expense. Do you see
11 that?

12 A Yes.

13 Q And there are dashes underneath Barclays?

14 A Yes.

15 Q What did that indicate to you?

16 A That there was no difference between the rates.

17 Q And was Barclays the best lender based upon this
18 analysis?

19 A Yes. Overall they were the best lender.

20 Q Ask you to take a look at Exhibit 89, please, which is
21 also in evidence. Mr. Orr, do you recognize this document?
22 Turn the page.

23 A Yes.

24 Q And what is this document?

25 A This is a comparison, I believe, of approximately five

1 lenders on the back page, I believe, of the commitment
2 letters that the previous lenders had actually provided to
3 Miller Buckfire.

4 Q Okay. Turn your attention to page 5 of the document.

5 A Yes.

6 Q Now, there are a smaller number of banks or financial
7 institutions across the top row there of the columns. Do you
8 see that?

9 A Yes. It said five, but it's four.

10 Q Yeah. And it says Barclays, CarVal, BAML, and Goldman.
11 Do you see that?

12 A Yes.

13 Q Do you recall how they were selected?

14 A Yes. I think, based upon -- it was a winnowing down
15 process based upon the responses to the original
16 solicitation. The analysis that you showed me before that
17 the -- Miller Buckfire did an analysis of the terms under the
18 actual commitment letters that the parties were proposing,
19 and these four potential lenders were selected as the best.

20 Q And then the shaded box at the bottom of the page, what
21 did that indicate to you?

22 A This was an analysis of the average all-in cost based
23 upon the various commitment letters from each of the lenders.

24 Q And did it indicate which lender had proposed the best
25 package for the city?

1 A Yes.

2 Q And who was that?

3 A Barclays.

4 MR. SHUMAKER: You could take that down.

5 BY MR. SHUMAKER:

6 Q During this solicitation process for the post-petition
7 financing, Mr. Orr, did anyone ever tell you that there was a
8 bank or a financial institution that was willing to lend to
9 the city on an unsecured basis?

10 A No.

11 Q Did you expect anyone to offer the city unsecured money?

12 A No.

13 MR. MARRIOTT: Objection. Relevance.

14 THE COURT: Overruled.

15 BY MR. SHUMAKER:

16 Q Why not?

17 A The city had -- prior to the appointment of an emergency
18 manager, had suffered a number of credit rating downgrades.
19 With the appointment of the emergency manager, that was an
20 event of default under a number of different financial
21 instruments. Once we declared bankruptcy, it is highly
22 unlikely that anyone is going to loan to a bankrupt entity
23 without a senior secured status. That would be reckless.

24 Q Did you believe the post-petition financing process
25 yielded the best deal for the city?

1 A Yes.

2 Q Why?

3 A The city needs to stabilize its finances once and for
4 all. It needs to get out from under this whole swap contract
5 as soon as possible so it stops the sweep of its casino
6 revenue, the quarterly payments, and the risk that the
7 termination fee and termination event would be declared and
8 the casino revenue would be trapped. The city cannot plan
9 unless it removes this potential risk from the table so that
10 any plans that it does make both at an operational level or
11 now that we're in bankruptcy for a plan of adjustment level
12 are credible and realistic. If we don't do that, we are
13 constantly living with the risk that at any given time that
14 we've already suffered a termination event, a termination
15 event can be declared, which would certainly create a risk of
16 a trap of the revenue or a risk of significant full-blown
17 litigation, and that's no way to plan.

18 Q How about the financial terms of the deal? Do you
19 believe those are the best that the city can obtain?

20 A Yes. My understanding is that we went through a very
21 fulsome and lengthy process with a number of lenders. There
22 were terms which were worse for the city financially; that
23 Barclays proposed all-in the best terms that the city could
24 achieve at this time.

25 Q How does the new \$165 million agreement affect the city's

1 request for post-petition financing?

2 A It would appear to make it more attractive because we're
3 going to reduce the request dollar for dollar for the
4 termination loan that we requested originally down to 165
5 million.

6 Q So how much financing are you looking to obtain for the
7 city?

8 A 165 million for the termination fee and another 120
9 million for the quality of life loan, \$285 million total.

10 Q And how long do you believe that the Barclays commitment
11 is available to the city?

12 A We believe that the Barclays commitment will remain
13 available through January 2014.

14 Q Did you have any reporting obligations under state law
15 with respect to obtaining the post-petition financing?

16 A Yes.

17 Q And what were those reporting obligations?

18 A There was a question as to whether or not we had to seek
19 approval from the Treasury Department for the loan. Given
20 the history of the transaction, we wanted to be very careful,
21 so while there was some debate amongst my team as to whether
22 or not we had to ask Treasury for approval, I decided that in
23 an abundance of caution we should do that.

24 Q Let me show you Exhibit 96, which is also in evidence.
25 Mr. Orr, do you recognize this document despite its fairly

1 small font size?

2 A Yeah. Can you --

3 Q You see it?

4 A Yes. Can you turn --

5 Q And let's turn to page 2, if you would.

6 A Yes.

7 Q Mr. Orr, is that your signature?

8 A Yes, it is.

9 Q What is this document?

10 A This document is a request to the state's Treasury
11 Department that they approve the city's financing with
12 Barclays, including the commitment fee that was to be paid to
13 Barclays. There's a provision in the emergency manager
14 statute, 436, that I don't have to seek the approval of
15 Treasury if I'm engaging in transactions that are subject to
16 competitive bidding, which this was significantly, but here
17 again, just to be careful, I wanted to make sure that I had
18 Treasury's approval to enter into the commitment fee and the
19 actual transaction.

20 Q And I'm sorry. Were there attachments to this letter?

21 A I believe so. I believe we attached the commitment
22 letter and the proposal, yes.

23 Q Okay.

24 A Yes.

25 Q And did -- and this was to Treasurer Dillon, correct, the

1 letter?

2 A Yes.

3 Q Did Treasurer Dillon approve of the Barclay -- paying the
4 Barclays commitment fee?

5 A Yes. Treasurer Dillon responded to this letter and
6 approved the payment of the commitment fee and the Barclays
7 transaction.

8 Q I'd like to show you Exhibit 97. Do you recognize this
9 document, Mr. Orr?

10 MR. SHUMAKER: It's in evidence, your Honor.

11 THE WITNESS: Yes, I do.

12 BY MR. SHUMAKER:

13 Q And what is this document?

14 A This is Treasurer Dillon's response to me noting that
15 under the 436 I did not have to seek Treasury approval but
16 recognizing that in an abundance of caution it was
17 appropriate for them to approve the transaction, nonetheless.

18 Q And Mr. Dillon in the third paragraph of this letter --

19 MR. SHUMAKER: If you could blow that up, please.

20 BY MR. SHUMAKER:

21 Q -- provided reasons why he believed this was appropriate
22 for the city; correct?

23 A Yes.

24 Q And did you agree with the reasons that he sets forth
25 here?

1 A Yes. I knew that Treasurer Dillon going back to 2012 in
2 connection with the Detroit Reform Program in November had
3 been concerned about this transaction, the swaps in
4 particular, and that the amount of debt that the city was
5 carrying, the termination fee risk, the interest carried, the
6 multiplier on the notional amount, and I knew he understood
7 what it would mean to the city, and, quite frankly, I was
8 hoping that he would recognize that although I was taking a
9 belt and suspenders approach to the transaction, that I
10 wanted to be sure that for all time both here, in the future,
11 but also for the lender that everyone understood that this
12 was a final transaction to deal with this issue and it was
13 approved by the state.

14 Q And on the prior Exhibit 96, you indicated that you had
15 attached the commitment -- the Barclays commitment letters;
16 correct?

17 A Yes.

18 Q Had you signed the Barclays commitment letters when you
19 sent them to Mr. Dillon?

20 A No.

21 Q When did you sign the Barclays commitment letter?

22 A After receiving this letter from Treasurer Dillon.

23 Q Mr. Orr, did you submit the Barclays proposal to City
24 Council?

25 A Yes.

1 Q Why did you do that?

2 A City Council's approval is required, we believe, and they
3 have the opportunity to propose an alternative transaction.

4 Q Is it required under the emergency manager statute?

5 A I don't think it's the emergency manager statute.

6 Q Okay. What statute is it? Do you recall?

7 A I think it's the Home Rule City statute.

8 Q Okay. What happened after you submitted the Barclays
9 proposal to City Council?

10 A I instructed our team to go through the transaction with
11 City Council. I believe there was some discussion that a
12 potential lender had come in after this process, selection
13 process, and was proposing a loan via City Council. They
14 debated that and vetted it and ultimately decided not to
15 propose it as an alternative transaction.

16 Q And who made that proposal? Do you recall?

17 A I think it was Syncora.

18 Q Did the City Council approve the Barclays proposal?

19 A Did they approve it?

20 Q Yes.

21 A No.

22 Q What happened once the City Council disapproved the
23 proposal?

24 A Well, that's the only proposal that's available, and I
25 believe, under the Home Rule Act, Home Rule City Act, it goes

1 to the Emergency Loan Board.

2 Q Did the --

3 A Yeah, the Emergency Loan Board.

4 Q Did the City Council ever submit an alterative proposal
5 to the one that was reflected in the Barclays proposal?

6 A No.

7 Q Did you submit the Barclays proposal to anyone else for
8 their review or approval?

9 A To the Emergency Loan Board.

10 Q Okay. Let me show you Exhibit 100, please. Mr. Orr,
11 what is this document?

12 A This is a transmission document from Miller Canfield to
13 the Local Emergency Financial Assistance Loan Board or, as I
14 call it, Emergency Loan Board.

15 Q And why did you -- did you instruct Miller Canfield to
16 send this letter?

17 A Yes.

18 Q Why?

19 A A question was raised as to whether or not the board
20 would ultimately approve the transaction, and I believe those
21 questions were raised in connection with the approval we're
22 requesting here, and so to remove that question from this
23 process, we submitted it to the board for their approval.

24 Q Do you know whether the Emergency Financial Assistance
25 Loan Board has approved the Barclays proposal?

1 A Yes, they have.

2 MR. SHUMAKER: Your Honor, we would like to -- I'd
3 like to show the witness City Exhibit Number 142. It has not
4 been moved into evidence. I would do so now.

5 THE COURT: Any exhibit -- any objection to Exhibit
6 142?

7 MS. ENGLISH: No objection, your Honor.

8 THE COURT: It is admitted.

9 (City Exhibit 142 received at 10:19 a.m.)

10 MR. SHUMAKER: Would you put that up, please?

11 BY MR. SHUMAKER:

12 Q Mr. Orr, do you recognize this document?

13 A Yes.

14 Q And what is this document?

15 A This is the loan board's order approving the transaction.

16 Q And what is your understanding, generally speaking, of
17 what this order provides?

18 A The order provides -- authorizes the city to enter into a
19 transaction not to exceed 350 million for the purpose of
20 dealing with the swap termination payment as well as the
21 quality of life loan. The order recognizes that it is
22 subject to the Bankruptcy Court's approval of the transaction
23 to be operative.

24 Q Now let me turn your attention -- direct your attention
25 to paragraph 7 on page 6 of the document. Can you see that

1 first sentence there, Mr. Orr?

2 A Yes.

3 Q Is that what you're referring to?

4 A Yes.

5 Q Could you read it for the record, please?

6 A "This order of approval is conditioned upon approval by
7 the Bankruptcy Court of the motion by the city for an order
8 approving a post-petition financing, granting liens,
9 providing superpriority claim status, and modifying the
10 automatic stay in the bankruptcy case entitled In re. City of
11 Detroit, Michigan, Debtor, Case Number 13-53846."

12 Q Is it your understanding, Mr. Orr, that this order would
13 cover the new \$165 million agreement that you've described?

14 A Yes. The order specifically says that the total
15 aggregate amount of the loan cannot exceed 350 million, and
16 we're asking for less than that.

17 MR. SHUMAKER: Thank you, Mr. Orr. That's all I
18 have.

19 THE COURT: All right. I think we'll take our
20 morning recess at this time and reconvene, please, at 10:45.

21 THE CLERK: All rise. Court is in recess.

22 (Recess at 10:21 a.m., until 10:47 a.m.)

23 THE CLERK: All rise. Court is in session. Please
24 be seated.

25 MS. ENGLISH: Good morning again, your Honor. Good

1 morning, Mr. Orr.

2 THE COURT: Good morning. You may --

3 THE WITNESS: Good morning.

4 THE COURT: -- proceed.

5 MS. ENGLISH: Before I get into my -- the substance
6 of my cross-examination, there's a preliminary issue we'd
7 like to raise, but to do that we're going to just ask a few
8 foundational questions of Mr. Orr.

9 THE COURT: Okay.

10 | CROSS-EXAMINATION

11 | BY MS. ENGLISH:

12 Q Mr. Orr, you were testifying during your direct
13 examination as to the assessments that had been made with
14 respect to the claims the city could bring and the strengths
15 and weaknesses of those claims; is that right?

16 A Yes.

17 Q Now, isn't it true that you yourself have made no
18 independent assessment of the city's claims and the strengths
19 and weaknesses of those claims apart from what your attorneys
20 have shared with you; is that right?

21 A Yes.

22 Q Okay. In fact, in your August 30th deposition -- do you
23 remember that day?

24 A To a degree.

25 Q It's awhile back. I know.

1 A Yeah.

2 Q Okay. At that time, do you recall that you told us no
3 less than ten times that you had made no independent
4 assessments of the claims at issue whatsoever?

5 A If you say so.

6 Q Okay. And on your December 31st deposition, just a
7 little -- few days ago, earlier this week, you testified
8 again repeatedly -- I think it was six or seven times -- you
9 made no independent analyses on the claims and the strengths
10 and weaknesses; is that right?

11 A Yes.

12 Q Okay. And so you admit you had no independent knowledge
13 or assessment of the various arguments, for example,
14 challenging the validity of the swaps contracts?

15 A I relied on the advice and suggestions of my attorneys
16 and my investment advisors, yes.

17 Q Okay. And you made no independent assessment as to the
18 strength of the claim that the pledge of casino revenues was
19 invalid under the Gaming Act; correct?

20 A Yes.

21 Q You made no independent analysis as to whether estoppel
22 was a valid defense to the argument that the casino revenue
23 pledge was invalid; correct?

24 A Yes.

25 Q You didn't independently assess whether there were any

1 validity issues with respect to the COPs, did you?

2 A No.

3 Q And in terms of the swap counterparties' likelihood of
4 obtaining protections under the Bankruptcy Code, such as
5 through the safe harbor protections, you didn't independently
6 analyze those issues, did you?

7 A No.

8 Q Now, while you performed no independent analyses of the
9 various legal claims and defenses, you've testified that you
10 did receive legal analyses from your lawyers on all of these
11 issues; is that right?

12 A Yes.

13 Q And many of those analyses took -- were in written form.
14 They were in e-mails and written memoranda and the like; is
15 that right?

16 A Yes.

17 Q Okay. And you reviewed those e-mails and memoranda and
18 considered the communications from your attorneys in forming
19 the knowledge that you've testified about here today;
20 correct?

21 A Yes.

22 Q And you are, nevertheless, continuing to claim that the
23 attorney-client privilege protects all of those documents and
24 communications from being disclosed in the course of these
25 proceedings; is that right?

1 A Yes.

2 Q Okay. And, in fact, you have refused to produce any such
3 legal memoranda or similar documents; is that right?

4 A In consultation with my attorneys, yes.

5 Q Okay.

6 MS. ENGLISH: Your Honor, the objectors would like
7 to raise a motion that Mr. Orr, through his testimony today,
8 has waived the privilege. He has testified that his only
9 information, his only knowledge comes from his attorneys, and
10 he has similarly testified as to what that knowledge is, what
11 those analyses were, all the way down to testifying what his
12 attorneys told him about their discussions with the swap
13 counterparties. We believe this is a subject matter waiver
14 of the privilege, and we'd like to ask for production of all
15 of the analyses Mr. Orr reviewed and has relied on to come to
16 his testimony today. We'd like to ask for a continuance so
17 that we can get those documents, review them. We would be
18 able to do that over the weekend, if necessary, and come back
19 on Monday, but we think there is a subject matter waiver
20 here, and we're entitled to these documents.

21 As a footnote to my motion, I would also add that a
22 privilege log was produced by the city late last night
23 despite the fact that we've been asking for one for months
24 really. We got it late last night. It contains only, I
25 believe, 22 documents, just a select number of documents.

1 The city has basically been picking and choosing what
2 information they'll give us, what information they're
3 logging, and they're playing games with the privilege. That
4 just should not be permissible. We know for a fact that
5 there are documents that Mr. Orr has relied on that are not
6 logged in this privilege log, so I would like to ask for --

7 THE COURT: For instance?

8 MS. ENGLISH: For instance, your Honor, there was
9 actually a document that was claimed to be privileged by the
10 city that was inadvertently produced that goes directly to
11 the assessment of one of these claims that we have seen, and
12 it is not on the log. Thank you, your Honor.

13 THE COURT: May I see the log?

14 MR. SHUMAKER: May I approach, your Honor?

15 THE COURT: Yes, please.

16 MR. SHUMAKER: Your Honor, Greg Shumaker, Jones Day,
17 for the City of Detroit. There's been no waiver and nor is
18 one required in order to proceed. Mr. Orr has an
19 understanding. He obviously has legal and financial advisors
20 that he relies upon. That does not place the advice at
21 issue. He has an understanding based upon investigations
22 made and theories advanced. And I'm not certain which
23 inadvertently produced document Ms. English is referring to,
24 although I'm certain that the fact that it was inadvertently
25 produced means that she should have returned it as opposed to

1 now saying it's not on the privilege log. I don't know which
2 one that is, but this is not all of the privileged documents
3 ever produced by the legal -- Mr. Orr's legal team, but it is
4 the ones that related to the negotiation of the forbearance
5 agreement.

6 THE COURT: Anything further, sir?

7 MR. SHUMAKER: No. That's all, your Honor.

8 THE COURT: Any reply?

9 MS. ENGLISH: Just to answer the question about the
10 document that was produced, it was a document that was
11 produced, I believe, to the Retirement Systems, was used in a
12 deposition. Subsequent to the use of that document in the
13 deposition, the counsel for the city claimed that it was
14 privileged, it was an inadvertent production, and asked for
15 the document back, so --

16 THE COURT: Does anyone remember what that document
17 was?

18 MS. ENGLISH: You want to speak to that?

19 THE COURT: Ms. Green.

20 MS. GREEN: Yes. It was a document used during the
21 deposition of Mr. Orr on December 12th, and actually I
22 believe it was also used at his December 9th -- it was a one-
23 page document, and I don't see anything on the list that
24 appears to be the same document --

25 THE COURT: Do you remember --

1 MS. GREEN: -- although it's hard to tell.

2 THE COURT: Do you remember what it was?

3 MS. GREEN: It was a one-page document. There was a
4 flow chart on the front. The second page was a bullet point
5 list of legal issues. And it was clawed back on the grounds
6 of privilege; however, at his deposition Mr. Orr actually
7 said he did not know who wrote the document. He'd never seen
8 the document. And when it was clawed back, they told me that
9 it was because Mr. Orr had reviewed it in a meeting, so --

10 THE COURT: All right.

11 MS. GREEN: -- it doesn't make sense.

12 THE COURT: Ms. English, anything further?

13 MS. ENGLISH: No, your Honor.

14 THE COURT: All right. I'll take this under
15 advisement, and we'll take a break until -- let's see -- the
16 clock runs a little fast, but that's all right -- 11:15.

17 THE CLERK: All rise. Court is in recess.

18 (Recess at 10:56 a.m. until 11:27 a.m.)

19 THE CLERK: All rise. Court is in session. Please
20 be seated.

21 THE COURT: The Court concludes that it must deny
22 the motion to find a general waiver of the attorney-client
23 privilege here and to order the production of attorney-
24 client -- otherwise attorney-client privileged memoranda and
25 other kinds of documents. It is true, as Ms. English points

1 out, that Mr. Orr has testified here today that the
2 information that he has and about which he has testified
3 concerning the claims and defenses that the city might have
4 in relation to these transactions came largely from, if not
5 entirely from his attorneys. That observation, of course,
6 could be made in virtually every case in which a trustee in
7 bankruptcy or other proponent of a settlement seeks court
8 approval, and yet it simply cannot be the law that simply by
9 filing and pursuing a motion to approve a settlement, a party
10 is subject to a general waiver of the attorney-client
11 privilege as to all claims and defenses that the party
12 considered in proposing the settlement. Such a view of the
13 law would, in a very real way, not only discourage
14 settlements, but it would also give an unfair -- grossly
15 unfair advantage to the proposing party's opponents in the
16 litigation should the settlement not be approved, and so that
17 simply can't be the law. So for these reasons, the motion is
18 denied. You may proceed with your cross-examination.

19 UNIDENTIFIED SPEAKER: Judge Rhodes, I speak as a
20 citizen. It's clear --

21 THE COURT: All right. We're going to be in recess.

22 (Recess at 11:30 a.m., until 11:32 a.m.)

23 THE CLERK: All rise. Court is in session. Please
24 be seated.

25 THE COURT: You may proceed.

1 MS. ENGLISH: Thank you, your Honor, for the
2 consideration of our motion. We just have one point of
3 clarification. Does your ruling allow us to question Mr. Orr
4 as to the substance of the documents listed on the privilege
5 log?

6 THE COURT: It's very hard for me to answer that
7 question in the abstract. I would suggest that you ask
8 whatever questions you'd like to ask, and if the city
9 objects, we'll consider it on a case-by-case or question-by-
10 question basis.

11 MS. ENGLISH: Okay. We appreciate that. We may
12 come back to that a little later having just received the
13 privilege log last night.

14 THE COURT: Okay.

15 MS. ENGLISH: We'll get to that. Okay. Thank you.
16 BY MS. ENGLISH:

17 Q Hello again, Mr. Orr.

18 A Good morning. Good morning.

19 Q Mr. Orr, you are serving as the emergency manager of the
20 City of Detroit; correct?

21 A Yes.

22 Q And before you became the emergency manager, you were a
23 practicing lawyer for about 30 years; isn't that right?

24 A Yes.

25 Q And, in fact, you --

1 THE COURT: Excuse me one -- excuse me one second.
2 Mr. Orr, you have my permission, if there are any further
3 outbursts like this, to exit the courtroom promptly as you
4 and your security people see fit even through this door back
5 here.

6 THE WITNESS: Thank you.

7 THE COURT: All right. You may proceed.

8 MS. ENGLISH: Do we want to move that bookshelf?

9 THE COURT: He'll figure it out.

10 MS. ENGLISH: Okay. I don't want you tripping over
11 it on your way out.

12 BY MS. ENGLISH:

13 Q Okay. Practicing lawyer for about 30 years; correct?

14 A Yes.

15 Q And part of that time, you were a partner with Jones Day
16 for about ten years in the litigation and restructuring area;
17 right?

18 A Yes.

19 Q Okay. Jones Day is the law firm that's here representing
20 you and the city today; correct?

21 A Yes.

22 Q And it's fair to say, isn't it, that you have substantial
23 experience in the area of restructuring and bankruptcy; isn't
24 that right?

25 A Yes.

1 Q Okay. You've worked on a number of cases pending in
2 Bankruptcy Court where a settlement was presented for
3 approval under Rule 9019, haven't you?

4 A Yes.

5 Q So you understand what Rule 9019 requires and the factors
6 that a court needs to evaluate in deciding whether to approve
7 a settlement under that rule?

8 A Yes.

9 Q You understand what it means for a debtor to exercise
10 his, quote, "reasonable business judgment" when making
11 decisions in the course of a bankruptcy case, don't you?

12 A Yes.

13 Q Now, in past cases, I imagine you probably counseled a
14 number of restructuring clients and debtors in bankruptcy as
15 to when to settle, when to cut a deal, versus when to
16 litigate; is that right?

17 A Yes.

18 Q And when you counsel clients in this regard, you
19 generally want them to be fully informed as to what the
20 claims and defenses are that they might either litigate or
21 settle; correct?

22 A Yes.

23 Q Okay. And you want to make sure that your clients
24 understand the strengths and weaknesses of their litigation
25 positions; right?

1 A Yes.

2 Q Now, in this matter, you are now the one who's exercising
3 your reasonable business judgment in making decisions for the
4 City of Detroit; correct?

5 A Yes.

6 Q Okay. And you were the one who decided on the city's
7 behalf that this settlement reflected in the forbearance
8 agreement was in the city's best interest; isn't that right?

9 A Yes.

10 Q So you're the one exercising your best judgment to
11 determine that the forbearance agreement is a good deal for
12 the city; correct?

13 A Yes.

14 Q Now, I want to start with a subject that I think we can
15 agree on. It's correct, isn't it, that the service
16 corporations have swap contracts with the swap
17 counterparties; right?

18 A Yes.

19 Q The city itself does not have a direct swap contract with
20 the swap counterparties; correct?

21 A Yes.

22 Q But you do understand that the city has contracts with
23 the service corporations, contracts that we refer to as the
24 service contracts; correct?

25 A Yes.

1 Q And you understand that pursuant to those service
2 contracts, the city has hedge-related payments that it has to
3 make to the service corporations, and then the service
4 corporations use that money to make their hedge payments to
5 the swap counterparties; correct?

6 A Yes.

7 Q Okay. So you're aware that the service corporations
8 depend on the city to make payments of their various
9 obligations that they have under the COPs and the swaps;
10 right?

11 A Yes.

12 Q And to your knowledge, the service corporations don't
13 have any independent sources of income to pay those
14 obligations; isn't that true?

15 A Yes.

16 Q So you recognize and admit that through the service
17 contracts, the city itself took on swap obligations, didn't
18 it?

19 A That's one of the allegations, yes.

20 Q Well, in fact, you admit that's the case, that the city
21 has taken on through the service contracts swap obligations;
22 correct?

23 A Yes.

24 Q Okay. Now, I want to talk about the events that led up
25 to your negotiations with the swap counterparties in the

1 summer. Up until that time, isn't it true that the swap
2 counterparties never actually threatened to terminate the
3 swap contracts?

4 A They sent a notice of a termination event, but -- they
5 sent a notice of a termination event. I don't know if that
6 constitutes a threat.

7 Q Okay. Do you recall being deposed on August 30th?

8 A Yes.

9 Q And do you recall at that time in response to a
10 question -- I believe it was Mr. Hackney that was asking you
11 at the time -- that you said the swap counterparties had
12 never actually threatened to terminate at that time?

13 A Yes.

14 Q Okay. And they never threatened to bring any claims
15 against the city either, had they?

16 A No.

17 Q Okay. And the swap counterparties at that point had
18 never actually trapped the casino revenues in the accounts at
19 U.S. Bank, had they?

20 A No.

21 Q Okay. You believe, nevertheless, that reaching an
22 agreement with the swap counterparties was, to use your
23 words, crucial; isn't that right?

24 A Yes.

25 Q Okay. And you believe that any delay in getting a deal

1 done that might put the casino revenue at risk, in your view,
2 was dangerous for the City of Detroit; isn't that right?

3 A Yes.

4 Q Okay. Now, as the emergency manager for the City of
5 Detroit, you regularly review cash flow forecasts for the
6 city's finances; right?

7 A Yes.

8 Q In fact, at times you review them on a daily basis, don't
9 you?

10 A Yes.

11 Q Okay. And as you headed into negotiations with the swap
12 counterparties in the spring and summer of 2013, you were
13 reviewing the city's cash flow projections so that you
14 understood the city's revenue streams and financial
15 condition; correct?

16 A Yes.

17 Q And those projections indicated to you that there was a
18 chance that if the city continued in a steady state and took
19 no corrective action, it could run out of cash by the end of
20 the year; correct?

21 A Yes.

22 Q Okay. And yet you called in Mr. Buckfire to negotiate a
23 deal with the swap counterparties in June that took just
24 essentially one week; correct?

25 A It took a -- started before that, but essentially a week

1 in earnest, yes.

2 Q Now, isn't it true that as you headed into the
3 negotiations with the swap counterparties, you hadn't
4 formulated a back-up plan in the event you couldn't get a
5 deal with them?

6 A We would have to sue them.

7 Q You didn't actually have a back-up plan that you were
8 ready to implement, though, at that time, did you?

9 A No.

10 Q And, in fact, you said just now that you would sue them,
11 but isn't it true that you actually didn't know at that time
12 back in June if you were really prepared to sue them or not?

13 A The June 10th week?

14 Q Yes.

15 A No. We were prepared.

16 Q Were you?

17 A Yeah.

18 Q Okay. I'm going to have to ask you to look at your
19 deposition transcript, okay --

20 A Okay.

21 Q -- because I believe you told me something different in
22 August, so if you could look at your August transcript --
23 it's the August 30th date --

24 A Um-hmm.

25 Q -- on page 280 -- okay. If you look -- so roughly in the

1 middle of the page -- this was me deposing you at this point.
2 I asked you, "If you hadn't gotten a deal, were you prepared
3 to sue them?" meaning the swap counterparties, and there was
4 an intermittent objection, but then you answered me, and you
5 said, "I don't know." See that?

6 A Um-hmm.

7 Q You recall that --

8 A Um-hmm.

9 Q -- question and that answer?

10 A Yes.

11 Q Okay.

12 THE COURT: What lines were those, please?

13 MS. ENGLISH: Oh, I'm sorry, your Honor. It's lines
14 9 through 14 on page 280.

15 BY MS. ENGLISH:

16 Q And at this time -- we're back in June 2013 now -- you
17 don't recall ever having seen a draft complaint that was put
18 together at that time, do you?

19 A I don't recall.

20 Q Before I get into the sort of nitty gritty of the
21 negotiations, I want to ask you about the assumptions and the
22 goals you had going into the negotiations. Your assumption
23 going into the negotiations was that there were events of
24 default under the swaps that had occurred such that the swap
25 counterparties could unilaterally terminate the swaps and

1 demand a sizeable termination payment from the service
2 corporations; correct?

3 A Yes.

4 Q And another assumption you had was that the swap
5 counterparties could instruct the custodian to trap the cash,
6 trap the casino revenues; right?

7 A Yes.

8 Q And so one of your objections -- or one of your
9 objectives, rather, in these negotiations was to make sure
10 that the swap counterparties couldn't trap the casino
11 revenues; correct?

12 A Yes.

13 Q And another one of your objectives was to get a discount
14 on the termination liability you were facing?

15 A Yes.

16 Q And a third objective you had was you wanted to obtain an
17 option that would allow you to direct when the termination
18 would occur and when you'd have to pay that termination
19 payment; correct?

20 A Yes.

21 Q Okay. Now, prior to the June 4th meeting, which sort of
22 kicked off these negotiations, you discussed these objectives
23 with Mr. Buckfire; right?

24 A I believe so.

25 Q Okay. But you're aware, aren't you, that Mr. Buckfire

1 has said he never discussed any of the legal claims or the
2 strengths of the legal positions of the city with you before
3 he went into those negotiations?

4 MR. SHUMAKER: Objection, your Honor. Confronting
5 the witness with another's testimony is improper.

6 THE COURT: The objection is sustained.

7 BY MS. ENGLISH:

8 Q All right. Let's talk now about the negotiations of the
9 forbearance agreement, and I want to zero in on the June
10 negotiations for now. Okay?

11 A Yes.

12 Q Mr. Buckfire was the lead negotiator for the city when it
13 came to negotiating the business terms of the forbearance
14 agreement; correct?

15 A Yes.

16 Q And you personally did not participate in any face-to-
17 face meetings that were held with the swap counterparties at
18 that time; right?

19 A Correct.

20 Q So basically what happened is is that you authorized
21 Mr. Buckfire to negotiate the best possible deal he could
22 with the swap counterparties, and then that's what he did;
23 right?

24 A Yes.

25 Q And so about a week later, he comes out of the

1 negotiations, and he says, "Mr. Orr, this is the best deal
2 I'm able to get out of these swap counterparties, and it's my
3 advice we take it." Essentially true?

4 A Essentially, yes.

5 Q And so that was a week later, so now we're about June
6 11th; correct?

7 A Yes, approximately.

8 Q Okay. I'd like to draw your attention to Syncora Exhibit
9 230.

10 MS. ENGLISH: Travis, if we could have that pulled
11 up.

12 BY MS. ENGLISH:

13 Q Can you see it okay?

14 A Yes, yes.

15 Q All right. So you recognize this document, don't you,
16 Mr. Orr?

17 MS. ENGLISH: Travis, if you can just scroll all the
18 way to the bottom so Mr. Orr can see the whole thing.

19 Thanks.

20 THE WITNESS: Yes.

21 BY MS. ENGLISH:

22 Q Okay. Now, this is an e-mail that you sent to state
23 Treasurer Andy Dillon; correct?

24 A Yes.

25 Q And it was sent on June 12th; right?

1 A Yes.

2 Q Okay. Now, your e-mail attaches -- or forwards, rather,
3 an e-mail that's on the lower half of the page that was from
4 Mr. Buckfire to you; is that right?

5 A Yes.

6 Q Mr. Buckfire's e-mail to you indicates basically the
7 state of negotiations at this point in time; right?

8 A Yes.

9 Q Okay. And he's telling you in this e-mail that there's
10 just a very narrow gap left between the city's final offer of
11 75 percent and the swap counterparties' final offer of 77
12 percent. Do you recall that?

13 A Yes.

14 Q Okay. And he tells you in this e-mail that he thinks it
15 is, quote, "now time for you to enter the negotiations to
16 close this very narrow gap"; is that right?

17 A Yes.

18 Q And in forwarding this e-mail to Mr. Dillon, you
19 characterize this remaining gap as being, quote, "not
20 material"; correct?

21 A Yes.

22 Q And so then if I understand this e-mail, you would have
23 had a conversation later in the day -- it looked like it was
24 scheduled for four o'clock -- with the swap counterparties;
25 is that right?

1 A I believe so.

2 Q And then we know that you actually did close the deal at
3 75 percent; correct?

4 A Yes.

5 Q Okay. Now, I understand that your direct involvement
6 face to face with the swap counterparties would have came --
7 was limited and came towards the end, but I do want to ask
8 you about the back and forth you personally had. Okay?

9 A Yes.

10 Q When you were participating in the negotiations, they
11 were only by phone; right?

12 A Yes.

13 Q Okay. And in those phone calls, you don't ever recall
14 articulating the position to the swap counterparties that the
15 swaps were invalid or void, do you?

16 A No.

17 Q And you can't recall ever discussing on those calls that
18 the swap counterparties' liens were invalid or not secured;
19 correct?

20 A Correct.

21 Q You never debated the validity of the swap
22 counterparties' secured position with any representatives of
23 the swap counterparties, did you?

24 A Me personally?

25 Q You personally.

1 A No.

2 Q No. And on those calls, Mr. Buckfire didn't either, did
3 he?

4 A Not that I recall.

5 Q In fact, you do not believe that you had any discussions
6 with the swap counterparties about the city's potential legal
7 arguments against them at all, do you?

8 A No. I don't recall so.

9 Q Now, you testified on direct that your attorneys had
10 argued legal claims to the swap counterparties outside of
11 your presence; correct?

12 A Yes.

13 Q You weren't on any calls or in any meetings where that
14 type of discussion occurred; right?

15 A No.

16 Q And the only reason you know that might have happened is
17 from what your attorneys told you; is that right?

18 A Yes.

19 Q Okay. And you're claiming attorney-client privilege,
20 though, with respect to what your attorneys told you
21 directly, aren't you?

22 A Yes.

23 Q None of your attorneys are testifying in this matter, are
24 they, to your knowledge?

25 A To my -- no, not to the best of my knowledge.

1 Q Okay. All right. Now, the service corporations, there
2 are two entities, you understand, that are service
3 corporations, one called the Detroit General Retirement
4 Systems Service Corporation and one called the Detroit Police
5 and Fire Retirement Systems Service Corporation; is that
6 right?

7 A Yes.

8 Q These two service corporations are both parties to the
9 forbearance agreement; isn't that correct?

10 A Yes.

11 Q And it's been your position, has it not, that the service
12 corporations are legally separate and distinct entities from
13 the city; is that right?

14 A Yes.

15 Q And you assume that there must have been some
16 negotiations with the service corporations in June before
17 they signed onto the forbearance agreement; is that right?

18 A Yes.

19 Q But you didn't have any negotiations with the service
20 corporations, did you?

21 A No.

22 Q And you're not actually aware of anyone else who did
23 either; right?

24 A No.

25 Q And you never directed anybody on your team to negotiate

1 with the service corporations; correct?

2 A No. I directed them to close the deal.

3 Q Did you direct them to negotiate directly with the
4 service corporations?

5 A No.

6 Q Okay. You also aren't aware of any negotiations that
7 would have taken place between the service corporations and
8 the swap counterparties; is that right?

9 A Yes.

10 Q Okay. Now, you understand that the composition of the
11 service corporations' board of directors includes three city
12 officers and at least one City Council member?

13 A Yes.

14 Q And, in fact, Ms. Cheryl Johnson is the person who signed
15 the forbearance agreement. You know that to be true; right?

16 A Yes.

17 Q Okay. And she is the president of the two service
18 corporations; isn't that right?

19 A I believe so.

20 Q And she's also the city's finance director; correct?

21 A I believe she was the city's finance director.

22 Q At that time?

23 A Yes.

24 Q Okay. And you didn't -- but you didn't speak with her
25 about the forbearance agreement, did you?

1 A No.

2 Q And you didn't talk to her about whether or not she
3 should sign it, any conversations like that?

4 A No.

5 Q Okay. You don't know who got her signature on the
6 forbearance agreement, do you?

7 A No.

8 Q Okay. Is she also the one who signed the new amendment,
9 by the way?

10 A I don't know. I didn't see her signature.

11 Q Okay. All right. Also, I'm still in June here. Okay?
12 Going back to when you were negotiating, now, the swaps that
13 were in place operated to hedge against interest rate risk on
14 the COPs; correct?

15 A Yes.

16 Q Okay. And prior to entering into the forbearance
17 agreement, prior to negotiating the forbearance agreement, is
18 it your testimony that the city had evaluated potential
19 future interest rate moves?

20 A Can you repeat the question?

21 Q Did the city evaluate potential future interest rate
22 moves and how that would affect your liability on the swaps?

23 A Yes.

24 Q And it's true that to the extent any such analysis was
25 done, that was done by Miller Buckfire; correct?

1 A Yes, I believe it would have been.

2 Q Okay. And your understanding is that this was done and
3 was something that was considered in entering into the
4 forbearance agreement; correct?

5 A Yes.

6 Q Okay. Would it surprise you to know that Mr. Buckfire
7 testified they never did any such analysis?

8 A Yes.

9 MR. SHUMAKER: Objection, your Honor.

10 THE COURT: Sustained.

11 BY MS. ENGLISH:

12 Q Now, I want to turn your attention to the original deal
13 that you got in June. That deal in the original forbearance
14 agreement had the option to terminate the swaps at the city's
15 election for a discounted termination amount; is that right?

16 A Yes.

17 Q Okay. And the discount ranged from 75 percent during an
18 early time period and then graduated up to 82 percent if it
19 was exercised at a later time period; correct?

20 A Yes.

21 Q The total termination liability that the city potentially
22 faces fluctuates over time, doesn't it?

23 A Yes.

24 Q Okay. And the amount of the termination payment will
25 depend on what interest rates are on the day the termination

1 payment is due; correct?

2 A Not now.

3 Q Not now; correct. Under the swaps contracts, under the
4 city's original obligations before you entered into this
5 deal --

6 A Yes.

7 Q -- your termination payment liability at any given point
8 in time would change based on what the interest rates were on
9 any given day; correct?

10 A Yes.

11 Q Okay. So to determine the termination amount, you'd have
12 to peg it on -- peg what it actually was on the day you
13 exercised your option to terminate under the original deal;
14 right?

15 A Yes.

16 Q Now, we can agree, can't we, that, generally speaking, as
17 interest rates rise, the total termination liability of the
18 city decreases; correct?

19 A Yes.

20 Q And you also have a general understanding, don't you,
21 that the trend over the last several months has been, in
22 fact, that interest rates have been on the rise; correct?

23 A They've gone up and down, but that may be true about the
24 general trend.

25 Q In fact, it is true about the general trend. If we look,

1 say, over the last six months, interest rates have generally
2 risen during that period; isn't that true?

3 A Generally, yes.

4 Q And the effect of that rise in interest rates has been
5 that over, say, the last six months the termination payment
6 liability that the city would face has come down; correct?

7 A Yes.

8 Q So, for example, at the time you originally negotiated
9 the forbearance agreement in June, the termination liability
10 was estimated to be between 300 and \$400 million; is that
11 right?

12 A Yes.

13 Q Okay. And now you're aware, aren't you, that the city
14 has stipulated that as of -- let's take November 29th, the
15 end of November, the total termination liability had dropped
16 from somewhere in the 300 millions down to 278 million,
17 approximately; is that right?

18 A Approximately.

19 Q And as of -- if we look as of year end, so December 31st,
20 a few days ago, the total termination liability as of that
21 date has now dropped down to \$247 million, approximately; is
22 that right?

23 A I haven't looked at it as of December 31st, but if that's
24 the trend, I would say that's right.

25 Q Okay.

1 MS. ENGLISH: Your Honor, I would note -- I think --
2 did we have a stipulation filed yesterday? So yesterday the
3 parties filed a stipulation that had three termination
4 liability dates.

5 THE COURT: I saw that. Thank you.

6 MS. ENGLISH: Okay. Thanks.

7 BY MS. ENGLISH:

8 Q Now, we all remember all too well we were here two weeks
9 ago. You were sitting right there, and we were in the middle
10 of the trial on this matter, and the trial halted. And we
11 took a break for awhile, and you went off and had some
12 renegotiations with the swap counterparties trying to get a
13 better deal; right?

14 A Yes. We were ordered to mediation.

15 Q Right. You weren't otherwise planning on engaging in
16 reopening negotiations with the swap counterparties; were
17 you?

18 A No.

19 Q So just to set the stage, the renegotiations happened on
20 December 23rd and 24th; correct?

21 A Yes.

22 Q And those negotiations resulted in a new deal, which is
23 principally, if I can sum up the key points, that the city
24 will pay a fixed amount of 165 million to terminate the swaps
25 on or before January 31st; correct?

1 A Yes.

2 Q So gone is the percentage deal we had originally, and now
3 we're looking at a fixed fee; correct?

4 A Yes.

5 Q Okay. It's true, isn't it, that your only goal in going
6 into these negotiations was to reduce the amount of the
7 termination payment and maintain the general structure of the
8 deal you already had in place; correct?

9 A Yes.

10 Q Okay. At the same time, you don't know if you actually
11 determined what the total payment liability was on December
12 23rd when you went into those negotiations.

13 A During the course of those negotiations, we called Jim
14 Doak and Miller Buckfire and inquired about a range of the
15 potential termination, so we had that call and discussed it.

16 Q Okay. Before you went into the negotiations on the 23rd,
17 did you have an analysis done to say, "What's our current
18 termination payment liability as I head into these
19 negotiations? What's my bottom line I'm working with?" You
20 didn't do that; right?

21 A No. I don't recall analysis.

22 Q And so during the negotiations, you were working with an
23 understanding that the total termination liability as of that
24 time would have been in the high 200 millions; is that right?

25 A Yes, approximately.

1 Q Okay. And you were also working with the understanding
2 that 75 percent of that termination amount would be
3 equivalent to roughly \$230 million; right?

4 A Approximately, yes.

5 Q So fair to say that was the benchmark you were working
6 with that you were trying to improve on; correct?

7 A Yes.

8 Q Okay. Now, we know subsequently from the city's
9 stipulation that as of 12-23 the total termination liability
10 was approximately 256 million, which would make a 75-percent
11 payment on that approximately 190 million; is that true?

12 A I haven't seen the stipulation, but I'll take your math
13 as true, yes.

14 Q Okay. And those numbers that I just gave you, you didn't
15 have those on the 23rd; right?

16 A We had the general numbers but not those specific
17 numbers.

18 Q Okay. Also, before going into the negotiations on the
19 23rd, you did not ask Miller Buckfire to run an analysis that
20 looked at trending interest rates and how they might affect
21 your termination payment liability going into the future;
22 correct?

23 A Yes.

24 Q You didn't have an updated LIBOR curve analysis, for
25 example, in front of you to inform your negotiations?

1 A That's correct.

2 Q And to the extent that LIBOR rates rise, the termination
3 payment is going to come down; right?

4 A Yes.

5 Q But you don't know whether it would have affected your
6 settlement decisions if a LIBOR curve analysis had been
7 provided to you that reflected, in fact, that interest rates
8 were going to rise?

9 A Correct.

10 Q All right. Now, the only negotiations that led to this
11 new deal were on December 23rd and 24th; right?

12 A Yes.

13 Q After we broke from the trial on the 18th, you didn't
14 have any discussions in that intervening time period between
15 the 18th and the 23rd?

16 A Me personally?

17 Q Yeah.

18 A No.

19 Q And you don't know that anybody else on behalf of the
20 city did either; right?

21 A I think there was a conference on that Friday, but I
22 don't know.

23 Q You're referring to the status conference in front of
24 Judge Rhodes?

25 A Yes.

1 Q Okay.

2 A Um-hmm.

3 Q And you testified that the mediation basically -- you
4 didn't really get -- you didn't get in a room with the swap
5 counterparties and debate your arguments with them; right?

6 A Correct.

7 Q You were basically on a room sort of off on your own, and
8 the mediator went back and forth; is that right?

9 A Yes. The mediators went back and forth.

10 Q Okay. And did you have -- you didn't have any direct
11 negotiations with any of the other parties that were present
12 at the mediation; correct?

13 A Correct.

14 Q In fact, when I asked you about this a couple days ago,
15 you couldn't even remember the names of any other person that
16 was there on behalf of any other party; right?

17 A Mr. Marriott and Mr. Gordon but not all of them, yes.

18 Q And that's because Mr. Marriott stopped your deposition
19 and said, "Hey, wait a minute. Don't you remember me?";
20 right?

21 A Part of the usual suspects.

22 Q Usual suspects. Okay. All right. Now, in the course of
23 your negotiations, you testified on direct that your first
24 proposal was a settlement in the range of about 150 million;
25 right?

1 A Yes.

2 Q And you were thinking of a percentage number that fell in
3 the range of 50 to 60 percent as your first offer; is that
4 right?

5 A Yes.

6 Q You didn't come in with a first offer lower than 50
7 percent?

8 A No.

9 Q You didn't make it your goal to get to a 50-percent deal
10 because you started higher than that; right?

11 A We would have taken a 50-percent, but, correct, yeah.

12 Q Typically if you offer more than 50 percent, you're not
13 going to get to 50 percent; right?

14 A Yeah.

15 Q Now, you consider the new deal that you got to be
16 materially better than the first deal; right?

17 A Yes.

18 Q And that's because you think it reduces the optional
19 termination payment by tens of millions of dollars; right?

20 A Yes.

21 Q In fact, you testified you think it's a savings of \$65
22 million?

23 A Yes.

24 Q The reason you went for a fixed rate, you testified, is
25 that you wanted to avoid the risk associated with interest

1 rate fluctuations; correct?

2 A The reason we went for a whole number.

3 Q Yes.

4 A Yes.

5 Q Okay. So by way of example, you thought if interest
6 rates went down, your termination fee might go up if you were
7 using a percentage deal; right?

8 A Yes.

9 Q And the flip side of that is that if interest rates went
10 up, your termination liability using a percentage deal would
11 have gone down; right?

12 A Yes.

13 Q Before agreeing to change the deal to a fixed amount, you
14 didn't ask Miller Buckfire to run an interest rate analysis
15 so you could predict where you'd be at the end of January,
16 did you?

17 A No. As I said, we had a conversation with Jim Doak -- a
18 couple of conversations that afternoon, but I wouldn't call
19 it a full-blown analysis.

20 Q Okay. And based on those conversations and the city's
21 general understanding, there was a general expectation that
22 in the future interest rates might increase and the
23 termination liability might come down; isn't that true?

24 A There was a general understanding that they might go up
25 or they might go down.

1 Q The option to terminate the 165 million expires on
2 January 31st; correct?

3 A Yes.

4 Q And you didn't estimate what your total termination
5 liability would be on January 31st, did you?

6 A No.

7 Q But you did estimate that if you went back to the date of
8 the original motion to approve your original forbearance
9 agreement, 165 million would be somewhere in the neighborhood
10 of 62, 63 percent of your termination liability; right?

11 A Yeah. We didn't estimate. We calculated that number off
12 of the original motion.

13 Q Okay. So you're working with the understanding I think
14 165 million is in the neighborhood of a 62-percent, 63-
15 percent deal; correct?

16 A Yes.

17 Q Okay. And on that basis, you're comparing that 62, 63
18 percent to the original 75 percent, and you're thinking I'm
19 getting a much better deal here; right?

20 A Yes.

21 Q Now, as you mentioned, the deal only lasts until January
22 31, but the old deal had a runway period that didn't expire
23 until June 2014; is that correct?

24 A Yes.

25 Q You negotiated the shortened expiration date so you could

1 get the deal done as soon as possible and avoid making the
2 swaps payments that would come due in March; right?

3 A Yes.

4 Q But you didn't do any analysis that would compare the
5 cost of the swaps payments upcoming versus the savings that
6 you might gain from a decreasing termination payment;
7 correct?

8 A Yes.

9 Q Now, during the December negotiations that occurred last
10 week, there weren't any representatives of the service
11 corporations there either; right?

12 A Not on behalf of the city; correct.

13 Q On behalf of the city or on behalf of the service
14 corporations?

15 A No. There was no one in our room. I assume there was no
16 one else from the service corporations in any of the other
17 rooms.

18 Q Did you see any representative of the service
19 corporations at any time during the negotiations on the 23rd
20 or 24th?

21 A No.

22 Q Okay. And did you have any discussions or any
23 negotiations with any representatives of the service
24 corporations last week?

25 A No.

1 Q To your knowledge, did anyone on behalf of the city
2 engage in any negotiations with the service corporations?

3 A Not that I know of.

4 Q Do you have any knowledge that anyone on behalf of the
5 service corporations negotiated with the swap counterparties
6 at all?

7 A Not that I know of.

8 Q Do you even know whether the service corporations have
9 agreed to the sixth amendment to the forbearance agreement?

10 A I'm not sure.

11 Q As of Tuesday, you didn't know whether they had agreed to
12 it or not; correct?

13 A Correct.

14 Q I want to turn now to talk a little bit about the claims
15 and defenses that are being settled by the forbearance
16 agreement. You testified on direct that you definitely
17 considered whether the swap obligations were void ab initio
18 under Act 34; correct?

19 A Yes.

20 Q Now, do you recall in your August deposition that I asked
21 you questions about that very potential argument?

22 A I don't recall.

23 Q You don't recall me asking you if you had considered the
24 argument that the swaps were void under Act 34?

25 A No. I don't recall, but I'm happy to look at the

1 deposition.

2 Q Okay. Do you not recall that when I asked you about Act
3 34, you couldn't tell me for sure whether it was considered?
4 You just said it was, quote, more likely than not that it had
5 been one of the issues that had been considered. You don't
6 remember that?

7 A If you say so. I just don't recall.

8 Q Should we look at your testimony to see that?

9 A Sure.

10 Q Okay. So why don't we pull up the 8-30 deposition
11 transcript? And I'm going to look at page 277, line 12 to
12 18. And do you see -- admittedly this went on for a couple
13 of pages. We had some back and forth banter about this, but
14 you'll see starting at line 12 I say, "Sitting here today,
15 you don't have an independent recollection for sure that Act
16 34 was looked at; isn't that correct?" And you say
17 repeatedly, "It's more likely than not." You were never able
18 to give me a definitive answer that it was actually something
19 you considered; correct?

20 A Yes.

21 Q Okay. And the same was true of the argument that the
22 pledge of casino revenues was invalid under the Gaming Act,
23 isn't it?

24 A Yes.

25 Q You've testified here today that was definitely one of

1 the arguments you looked at and considered; right?

2 A Yes.

3 Q But in August you couldn't tell me that for sure. You
4 said more likely than not that was something that was among
5 the list of things that was considered; correct?

6 A Yes.

7 Q When you were deposed on Tuesday of this week and you
8 were pressed to describe the substance of each of these
9 claims that you testified on direct were considered, there
10 were times at which you didn't know the details of the
11 arguments, and you got confused, weren't there?

12 A Yes. We talked about that.

13 Q All right. So, for example, when I asked you to describe
14 the basis for the claim that the pledge of casino revenue was
15 invalid under the Gaming Act, in the course of your answers,
16 you repeatedly started referencing Act 34, didn't you?

17 A In that discussion I was talking about Section 18 because
18 I was looking at the 18-percent tax in the Gaming Act as
19 opposed to Section 12, but, yes, we had that discussion about
20 Act 34 versus the Gaming Act.

21 Q You mixed them up several times, didn't you?

22 A Yes.

23 Q Yeah. And, in fact, you testified that your
24 understanding of the weakness of the casino revenue pledge
25 argument was that the City Council had cited to provisions of

1 Act 34 about tax relief in their ordinance; correct?

2 A Yes.

3 Q And when I asked you about the vulnerability of the liens
4 on post-petition casino revenue under the Bankruptcy Code,
5 Section 928, you talked about an Orrick legal opinion
6 blessing the validity of the liens; right?

7 A Yes.

8 Q But you seemingly did not understand that the Orrick
9 opinion explicitly expressed no opinion under Section 928;
10 correct?

11 A Well, there are two paragraphs on page 3 of that opinion,
12 one where they talk about it would be -- classifies as excise
13 taxes and possibly special revenues, and in the paragraph
14 under that they go into but we're not going to comment on
15 928.

16 Q Right. They did not express an opinion --

17 A Right.

18 Q -- on the applicability of 928; correct?

19 A Yes.

20 Q Okay. When I asked you about the argument that the swaps
21 obligations were void ab initio because the city failed to
22 comply with Act 34, in the context of those discussions, you
23 referred me back and started referencing the Gaming Act,
24 didn't you?

25 MR. SHUMAKER: Objection, your Honor. Ms. English

1 is quizzing the witness on what the deposition testimony was.
2 If she has a question for him and then there's an
3 inconsistency, she could confront him with it, but this is an
4 improper line of questioning.

5 MS. ENGLISH: Your Honor, in lieu of designating 40
6 pages of a deposition transcript that clearly showed Mr. Orr
7 does not understand the substance of these arguments, I am
8 trying to elicit testimony here today just to show the
9 highlights of how he got confused, and he couldn't testify as
10 to what these arguments really entailed. He started mixing
11 them up. He was great with the buzz words, but when you
12 asked him questions about what they actually involved, he
13 didn't know.

14 THE COURT: Well, it's fine to have the witness
15 testify concerning what he previously testified to, but I
16 think the more proper procedure is to ask him if you asked
17 this question and if he gave this answer rather than to try
18 to summarize it for him.

19 MS. ENGLISH: Okay. Thank you, your Honor.

20 BY MS. ENGLISH:

21 Q All right. Why don't we do exactly that? We'll look at
22 a couple of references from the deposition transcript. So I
23 think you have the December 31 transcript in front of you.
24 Okay. If you look on page 82 of your transcript --

25 MS. ENGLISH: And, Travis, you could bring this up,

1 too, if you have it handy.

2 MR. SHUMAKER: Your Honor, same objection. Running
3 through the deposition testimony is improper. If she wants
4 to ask this question and she gets a different answer from the
5 witness, she can then bring this up as inconsistent, but just
6 running through all these questions is improper.

7 THE COURT: Well, it's not hearsay. He's a
8 representative of the city, so the deposition can be used for
9 any purpose, so I'll permit it.

10 MS. ENGLISH: Thank you, your Honor.

11 BY MS. ENGLISH:

12 Q So I just want to run through just a couple of examples.
13 Okay. So on page 82, do you see starting let's say around
14 line 9 you're being asked about arguments as to voidness or
15 invalidity of the swap obligations? Do you see that?

16 A Um-hmm.

17 Q And then do you see in your answer, lines 12 to 14, that
18 you reference that there could be arguments made that the
19 swap obligations were not properly authorized under the
20 Gaming Act?

21 A Um-hmm.

22 Q Okay. And just another few lines later towards the
23 bottom of that page, line 23, I asked you, "So your
24 understanding is that the Gaming Act imposes conditions on
25 swap obligations?" And you thought it might.

1 A Yes.

2 Q Okay. Now, as to the Act 34 arguments, you don't even
3 know whether or not the requirements of Act 34 were, in fact,
4 followed; correct?

5 A Correct.

6 Q Okay. You testified on direct that you had a concern
7 about estoppel arguments that could be raised; correct?

8 A Yes.

9 Q But you don't have an understanding that the doctrine of
10 estoppel is inapplicable to void ab initio claims?

11 A That's correct.

12 Q Another defense that you testified to, I believe, was
13 safe harbor protections; is that right?

14 A Yes.

15 Q Okay. Yet you don't have an understanding as to whether
16 the swap counterparties even meet the definition of, quote,
17 "swap participant" under the Bankruptcy Code; isn't that
18 right?

19 A That's correct.

20 Q And, in fact, you testified that the city has not even
21 developed a position with respect to that; correct?

22 A Yes.

23 Q Now, you testified -- on your direct examination, Mr.
24 Shumaker asked you a number of questions about evaluating the
25 strengths and weaknesses of all of the claims you looked at

1 and how you assessed your likelihood of success, the city's
2 likelihood of success; right?

3 A Yes.

4 Q Okay. It's true, is it not, that for every single claim
5 you looked at, you assessed the city's odds as 50/50?

6 A Yes.

7 Q Not a single claim that you said 75/25?

8 A No.

9 Q Not a single claim you said 80/20?

10 A Correct.

11 Q Every single claim was just a toss-up in your mind;
12 correct?

13 A Yes.

14 Q It's true, isn't it, that back in June 2013 you really
15 wanted to get a deal done with the swap counterparties? You
16 really didn't want to have to litigate with them; correct?

17 A Yes.

18 Q You had -- at that time and subsequently, you've had a
19 lot of cash flow forecasts put together by E&Y showing you
20 various scenarios; correct?

21 A Yes.

22 Q Some show with the DIP. Some show no DIP. Some show
23 cash trapped. Some show the settlement payments. Some show
24 the continued swap monthly payments; correct?

25 A Yes.

1 Q All of these options were shown?

2 A Yes.

3 Q You never asked for a single cash flow analysis that
4 showed getting post-petition financing and litigating with
5 the swap counterparties as opposed to settling with them, did
6 you?

7 A Yes.

8 Q Yes, you did, or, yes, you agree you didn't ask for that?

9 A We did not get that, yes.

10 Q Now, if you were successful in a litigation against the
11 swap counterparties, that would mean you could void all of
12 the city's swap obligations and the swap counterparties'
13 liens altogether; correct?

14 A Potentially, yes.

15 Q Okay. It would also mean that the swap counterparties
16 would not have the ability to trap the city's access to
17 casino revenue; correct?

18 A Certainly, yes.

19 Q And it's your understanding that if the city were
20 successful on its void ab initio argument, it could then
21 recover potentially all of the swap payments it had made to
22 the swap counterparties; correct?

23 A Potentially, yes.

24 Q And given that those swap payments are roughly in the
25 neighborhood of \$50 million a year, we're talking about

1 hundreds of millions of dollars, aren't we?

2 A Potentially, yes.

3 MS. ENGLISH: That's all I have, Mr. Orr. Thank you
4 very much.

5 THE WITNESS: Sure.

6 MS. ENGLISH: I spoke too soon.

7 THE COURT: Oh, well --

8 MS. ENGLISH: I'm reminded --

9 THE COURT: Go ahead then.

10 MS. ENGLISH: -- that I referenced -- sorry?

11 THE COURT: Go ahead then.

12 MS. ENGLISH: I'm reminded that I referenced Syncora
13 Exhibit 230, and I would like to move that into evidence,
14 please.

15 THE COURT: Any objection to Exhibit 230?

16 MR. SHUMAKER: No objection, your Honor.

17 THE COURT: It is admitted.

18 MS. ENGLISH: Thank you, your Honor.

19 (Syncora Exhibit 230 received at 12:18 p.m.)

20 THE COURT: How long will you be, sir?

21 MR. ARNAULT: Maybe 15 minutes, perhaps less.

22 THE COURT: Anyone else? All right. We're going to
23 take our lunch break now then, and we will reconvene at two
24 o'clock, please.

25 THE CLERK: All rise. Court is in recess.

1 (Recess at 12:19 p.m. until 2:02 p.m.)

2 THE CLERK: All rise. Court is in session. Please
3 be seated.

4 THE COURT: Looks like everyone is here. You may
5 proceed, sir.

6 MR. ARNAULT: Thank you, your Honor. Before we
7 begin, I've been asked by my fellow objectors to obtain a
8 minute count if that's okay.

9 THE COURT: Yes. It'll take me a minute to do that.
10 Why don't you proceed, and then when I'm ready to give it to
11 you, I will give it to you?

12 MR. ARNAULT: Sounds good. Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MR. ARNAULT:

15 Q Good afternoon, Mr. Orr. How are you?

16 A Good afternoon. I'm fine.

17 Q My name is Bill Arnault, and I represent Syncora. We met
18 the other day at your deposition.

19 A Yes.

20 Q So to begin, I'd like to just go over a few questions
21 about your understanding of the objectives and some of the
22 effects of the forbearance agreement, and I know Ms. English
23 asked you some of those questions, but I just want to link
24 that with the forbearance agreement and the sixth amendment.

25 A Yes.

1 Q So to begin, your understanding is that the forbearance
2 agreement releases all claims that the swap counterparties,
3 the service corporations, and the city may have against one
4 another; right?

5 A Yes.

6 Q In addition, it is also your understanding that the
7 forbearance agreement resolves any defaults that exist under
8 the collateral agreement and the amended swaps; right?

9 A Yes.

10 Q And the result of the forbearance agreement is that the
11 city and the swap counterparties will be able to perform
12 under the forbearance agreement without being subject to any
13 liability to any third parties; correct?

14 A With the exception of any possible regulatory or criminal
15 enforcement, yes.

16 Q Mr. Orr, you took a deposition in this case; correct?

17 A Yes.

18 Q And at that deposition you told the truth; correct?

19 A Yes.

20 Q All right. If you could flip to page 141 of your August
21 30th deposition --

22 A Yes.

23 Q If you could look at line 14 through 20, please. Just
24 let me know when you're there.

25 A Page 131?

1 Q Page 141.

2 A 141.

3 Q Line 14.

4 A Yes.

5 Q "Question: Okay. And the result of the
6 forbearance agreement is that the city will be able
7 to perform under the forbearance agreement without
8 being subject to any liability to any third party?

9 Answer: That is my understanding.

10 Question: And so will the swap counterparties;
11 correct?

12 Answer: That is my understanding."

13 Were you asked those questions, and did you give
14 that response?

15 A Yes.

16 Q And so that immunity from liability, that's one of the
17 values of this agreement to both the city and the swap
18 counterparties; right?

19 A Yes.

20 Q Now, moving on to some of your objectives as part of the
21 negotiations, as part of the initial negotiations, one of
22 your objectives was to get the swap counterparties to waive
23 their cash strapping rights on an interim basis so that the
24 city could access the casino revenues; right?

25 A Yes.

1 Q And that was still an objective in the most recent round
2 of negotiations; right?

3 A Yes.

4 Q A second objective was that you wanted to modify the swap
5 to get a discount on the termination amount; right?

6 A Yes.

7 Q And a third objective was that you wanted to obtain an
8 option about when you could direct the termination of the
9 swap; correct?

10 A Yes, generally, yeah.

11 Q And you achieved these three objectives in the
12 forbearance agreement; right?

13 A Yes.

14 Q And you achieved these three objectives in the sixth
15 amendment; right?

16 A Yes.

17 Q You would agree with me that another benefit of the
18 forbearance agreement is that from the city -- a benefit from
19 the city's standpoint is that it provides the city with
20 interim access to the casino revenues; right?

21 A Yes.

22 Q And your understanding is that during the forbearance
23 period, the swap counterparties have temporarily relinquished
24 the right to direct cash trapping so long as the optional
25 termination period is pending; correct?

1 A Yes.

2 Q And you understand that cash passes through the general
3 receipt subaccount on a monthly basis; right?

4 A Yes.

5 Q And we can agree that between July 15th and whenever the
6 option is exercised or expires, there is cash that is --
7 either already has or will flow through the cash trap to the
8 city; right?

9 A The cash trap?

10 Q Yeah. It will flow through the cash trap to the city;
11 correct?

12 A Yes. The general receipts account, yes.

13 Q Yeah. There will be money that will flow to the city;
14 correct?

15 A Yes.

16 Q And we can also agree that if the option expires, the
17 city is under no obligation to put the cash that it received
18 in the interim back into the general receipt subaccount;
19 right?

20 A Yes.

21 Q Now, you are familiar with the idea that two different
22 contracts can be part of one integrated transaction; right?

23 A Yes.

24 Q And your understanding is that the forbearance agreement
25 is part of the same subject matter as the collateral

1 agreement and the swaps agreement; right?

2 A Same subject matter?

3 Q Yes.

4 A Yes.

5 Q Finally, just a few more questions about the forbearance
6 agreement. Over the past few weeks, it's been suggested at
7 various times that if the city was not able to reach an
8 agreement with the swap counterparties, that it would instead
9 choose to sue them; right?

10 A It might.

11 Q Because the city has various claims against the swap
12 counterparties; right?

13 A Yes.

14 Q And these potential claims against the swap
15 counterparties could be considered an asset for purposes of
16 bankruptcy; correct?

17 A Claims can be considered assets for purposes of
18 bankruptcy, yes.

19 Q And here the forbearance agreement would resolve those
20 claims; correct?

21 A Yes.

22 Q Now, you submitted the terms of the forbearance agreement
23 to the governor for approval; right?

24 A To the treasurer.

25 Q But you don't recall ever submitting the forbearance

1 agreement to the City Council for approval; right?

2 A The forbearance agreement?

3 Q Yeah, the forbearance agreement.

4 A No, I don't recall that.

5 Q And you never submitted the sixth amendment to the City
6 Council for approval; right?

7 A No, I don't recall that.

8 MR. ARNAULT: Thank you, Mr. Orr. No further
9 questions, your Honor.

10 CROSS-EXAMINATION

11 BY MR. MARRIOTT:

12 Q Good afternoon, Mr. Orr.

13 A Good afternoon, Mr. Marriott.

14 Q Thank you for restoring me to the ranks of the usual
15 suspects. I am not going to ask you any questions about the
16 forbearance agreement. I want to focus on the Barclays
17 transaction.

18 A Um-hmm, yes.

19 Q Now, Mr. Orr, you made the ultimate decision to accept
20 the Barclays proposal for the post-petition financing that
21 the city is now seeking authorization to borrow; correct?

22 A Yes.

23 Q And when you were asked earlier on direct what factors
24 you considered in making the selection, the first factor you
25 indicated was the cost of the various alternatives available

1 to you; correct?

2 A Yes.

3 Q And, in fact, the cost of financing is an important
4 factor in deciding whether or not to undertake a financing
5 transaction; correct?

6 A Yes.

7 Q And, indeed, it would be imprudent to accept a financing
8 proposal if you did not know what the cost of the financing
9 would be; correct?

10 A It might be.

11 Q Well, it might be or it would be?

12 A Generally, yes.

13 MR. MARRIOTT: Can we have Exhibit 89?

14 BY MR. MARRIOTT:

15 Q Mr. Orr, I believe you testified on direct that you used
16 this document as part of your decision-making process in
17 selecting the Barclays commitment over the other commitments
18 the city received; correct?

19 A Yes.

20 Q And if we could turn to page 5 of Exhibit 89, we see here
21 that an entire page is devoted to a cost comparison of the
22 four commitments you were considering; correct?

23 A Yes.

24 Q Now, for two of the four commitments, including Barclays,
25 there is a reference to market flex; correct?

1 A Yes.

2 Q And market flex provides to a lender the flexibility to
3 increase the minimum interest rate on a loan if that is
4 necessary to attract interest from other potential
5 participants in the loan; correct?

6 A It's a process that allows the potential participant
7 bidders to increase the rate, yes.

8 Q So that the -- so that Barclays, if it exercised the
9 market flex as necessary to find other interested
10 participants in the transaction, could raise the minimum
11 interest rate; correct?

12 A Those participants could bid above the minimum rate, yes.

13 Q Which would result in the loan bearing interest above the
14 original minimum rate; correct?

15 A Yes.

16 Q Okay. And Exhibit 89 informs you of both the existence
17 of a market flex term -- of both the existence of a market
18 flex term in the Barclays and the Goldman commitments and
19 also specifies the scope of the market flex; correct?

20 A Yes.

21 Q Okay. And so looking at the Barclays column, which is
22 the far left, the lowest minimum interest rate on the loan is
23 3.5 percent, but the minimum could rise as high as 6.5
24 percent under the market flex provisions; correct?

25 A Yes.

1 Q And, in fact, this chart accurately reflects what the
2 Barclays interest rate range could be under the proposal
3 before the Court today; correct?

4 A Yes.

5 MR. MARRIOTT: Could we put up Exhibit 94?

6 BY MR. MARRIOTT:

7 Q Mr. Orr, if you would look at 94, which has been
8 admitted, this is the Barclays commitment letter. Do you
9 recognize it?

10 MR. MARRIOTT: Maybe you could scroll through it.

11 THE WITNESS: Just to the back page.

12 BY MR. MARRIOTT:

13 Q You actually have hard copies there if that would be
14 easier for you to --

15 A I just wanted to check my signature. That's all.

16 Q That's fine.

17 A That's all. You can just flip to it.

18 Q Run out of pages?

19 A Yeah. Which number? I'll just --

20 Q A signature is on page 10.

21 A Mr. Marriott, if you represent this is a true copy with
22 my signature, that's fine.

23 Q There it is. Success.

24 A Okay.

25 Q Okay. Now, although the commitment letter and the term

1 sheets attached to it mention market flex, I'm correct, am I
2 not, that the commitment letter does not disclose the scope
3 of the market flex?

4 A I believe that's correct.

5 Q Okay. And, in fact, the scope of the market flex was set
6 forth in a separate fee letter with Barclays; correct? Let
7 me help.

8 A Yeah.

9 MR. MARRIOTT: Could we put up Exhibit 93?

10 THE WITNESS: Yeah. Take me to it. I believe
11 that's correct. I just haven't seen the provision recently.

12 MR. MARRIOTT: Okay. Maybe we could scroll through.
13 I can tell you when to stop.

14 THE WITNESS: There you go.

15 MR. MARRIOTT: Okay. Stop right there.

16 BY MR. MARRIOTT:

17 Q This is -- do you recognize this as the fee letter with
18 Barclays?

19 A I believe so.

20 Q All right. And do you see where this is the place where
21 the scope of the market flex is set forth?

22 A Yes.

23 Q Okay. Now, you're familiar with Michigan Public Act 436;
24 correct?

25 A Yes.

1 Q And, in fact, that's the statute under which you are
2 appointed; correct?

3 A Yes.

4 Q And I think your direct testimony might have been a
5 little ambiguous on this point, but it's under PA 436 that
6 you are required to submit to City Council certain proposed
7 acts that you are considering on behalf of the city; right?

8 A Yes.

9 Q And one of those things that requires submission to City
10 Council is a transaction such as the proposed Barclays
11 transaction for the borrowing of money; correct?

12 A Yes.

13 Q And, in fact, you made a submission to City Council with
14 respect to the Barclays proposed post-petition financing;
15 correct?

16 A Yes.

17 MR. MARRIOTT: Could we bring up Exhibit 98? Next
18 page.

19 BY MR. MARRIOTT:

20 Q Now, is this, in fact, that submission under PA 436 to
21 City Council with respect to the Barclays proposal?

22 A Yes, I believe so.

23 Q And you can work from memory or you can take time to
24 scroll through it, whichever you prefer.

25 A Okay.

1 Q But Exhibit 98, the submission to City Council, did not
2 include a copy of the fee letter that we just reviewed,
3 Exhibit 93; correct?

4 A I believe that's correct.

5 Q Just the term sheets that were attached to the commitment
6 letter; correct?

7 A Can you scroll to the first page, please, just the cover
8 memo, the very first page? Yes.

9 Q Okay. Now, other than this communication to City Council
10 regarding the proposed Barclays financing, which does not
11 include the fee letter which has the substance of the market
12 flex provision, did you personally otherwise communicate to
13 City Council the substance of the market flex provision that
14 was contained in the fee letter?

15 A No.

16 Q To your knowledge, did anybody else?

17 A Not that I know of.

18 Q Now, City Council ultimately declined to approve the
19 Barclays financing and passed a resolution to that effect;
20 correct?

21 A I believe so.

22 MR. MARRIOTT: Could we go to Exhibit 96?

23 BY MR. MARRIOTT:

24 Q Mr. Orr, you testified on direct regarding this exhibit,
25 which, as I understand it, is a submission you made to the

1 then treasurer of the State of Michigan seeking approval for
2 the proposed Barclays loan; correct?

3 A Yes.

4 Q And I think you testified that you weren't sure whether
5 you needed it, but you thought out of an abundance of caution
6 it made sense to ask for it; correct?

7 A Yes. We thought we didn't need it, but in an abundance
8 of caution we asked for it, yes.

9 Q Okay. And if you would turn to pages -- first page 4 of
10 this exhibit, now, you did include the fee letter in your
11 submission to the treasurer, but you then had redacted the
12 market flex provisions; correct?

13 A Yes.

14 Q And to your knowledge, were the -- was the substance of
15 the market flex provisions otherwise communicated to the
16 treasurer?

17 A Not to my knowledge.

18 Q Just a couple other quick ones. I believe you testified
19 on direct that the commitment from Barclays as we sit -- as
20 you understand it, expires 1-31-14.

21 A I believe so.

22 Q Okay. And the loan will be reduced from 350 million to
23 285 million; is that correct?

24 A Yes.

25 Q Do you know if Barclays -- well, let me ask the question

1 this way first. Has there been an amendment to the
2 commitment letter to extend the termination date to 1-31 and
3 to reduce the amount of the loan to 285 million?

4 A I don't know.

5 Q Do you know whether in the absence of such an amendment
6 Barclays has otherwise indicated its agreement to those two
7 provisions?

8 A It is my understanding that they have agreed to those
9 provisions.

10 MR. MARRIOTT: Okay. I have nothing further. Thank
11 you.

12 CROSS-EXAMINATION

13 BY MS. GREEN:

14 Q Good afternoon, Mr. Orr. I'm Jennifer Green on behalf of
15 the Retirement Systems for the City of Detroit.

16 A Good afternoon, Mrs. Green.

17 Q I think you previously described the city was in sort of
18 a panic mode when you embarked on the first round of
19 negotiations with the swap counterparties back in June of
20 2013; correct?

21 A I didn't say it was a panic mode, but I said our
22 financial condition was dire.

23 Q I think you'd gotten some financial reports that were
24 worse than you expected; correct?

25 A Yes, um-hmm.

1 Q I think you used the words cash crisis and a potential
2 payless payday, things of that nature?

3 A Yes.

4 Q And so you -- or, rather, Ken Buckfire on the city's
5 behalf called up the swap counterparties, and you started the
6 negotiations at 50 cents on the dollar; correct?

7 A Not exactly. It's my understanding that discussions
8 regarding a discount to the potential termination payment had
9 been going on for some time, months before I got here, but
10 they became in earnest in the May through June time frame.

11 Q Okay. And the amount that you started the negotiations
12 at was around 50 cents on the dollar; correct?

13 A I believe generally, yes.

14 Q And then you ended up at 75, roughly?

15 A Yes.

16 Q Now let's fast forward to the present. The city has
17 filed bankruptcy. There are some protections in place as a
18 result of that; correct?

19 A Yes.

20 Q And you have the forbearance agreement in place, and I
21 think, as you just testified, the casino revenue is not in
22 danger of being trapped currently; correct?

23 A Not presently.

24 Q Okay. And then we have the evidentiary hearing that
25 we're all here for today, and you might recall on the 18th

1 when the judge, Judge Rhodes, stopped the proceedings, and I
2 think at your deposition you used the words and sort of
3 admonished the parties that 75 cents on the dollar is
4 something you might take if you actually have a judgment in
5 your hand. Do you remember that testimony?

6 A Yes, I do.

7 Q Okay. And you were here, and you were sitting on the
8 witness stand when that happened?

9 A Yes.

10 Q And we were ordered to go into mediation?

11 A Yes.

12 Q And so you'd gained a little different leverage in
13 negotiating position compared to where you were back in June;
14 correct?

15 A Yes, I think that's fair.

16 Q Okay. And then you started out the mediations on the
17 23rd, and you started at 50 cents on the dollar again; right?

18 A Roughly, yes.

19 Q Which was the same amount you started at back in June?

20 A Roughly, yes.

21 Q Okay. I think you testified that you became EM in March
22 of 2013; correct?

23 A Yes.

24 Q But you knew before officially commencing your role as
25 emergency manager that the swaps and the access to the casino

1 revenue were both significant issues with respect to the
2 city's financial stability; correct?

3 A Yes.

4 Q So you knew coming in that the swap agreements themselves
5 had to be dealt with kind of up front?

6 A I thought they were a significant issue to be dealt with,
7 yes.

8 Q But you knew that the swap agreements had been entered
9 into many years earlier in '05 and '06; right?

10 A Yes.

11 Q And the collateral agreement was back in '09?

12 A Yes.

13 Q And you didn't have any protocol in place for how you
14 would investigate the claims or defenses related to those
15 documents; correct?

16 A When you say -- well, when you say "protocol," there was
17 an investigation of potential claims related to those
18 documents, but I don't know if I would call it a protocol.

19 Q Well, I think you said earlier that you looked into the
20 City Council records, you did some legal analysis, and you
21 looked at some other public records; correct?

22 A Yes. My team and I looked at a number of different
23 records, yes.

24 Q Okay. But you didn't compile a list of, for instance,
25 city employees or officials that were involved in the swap

1 agreements or the collateral agreement itself; correct?

2 A No. I think there were records that showed the city
3 employees as well as the City Council people and the
4 discussions they had about those agreements.

5 Q Fair enough. You didn't interview any of those people?

6 A No.

7 Q Okay. And you didn't interview any of the financial
8 consultants who may have advised the city in connection with
9 either the swap agreements or the collateral agreements;
10 correct?

11 A Not that I know of.

12 Q And you didn't interview any of the City Council staff
13 members or anything of that nature?

14 A I wouldn't call it an interview, but I did have
15 conversations with at least one staffer, which was more
16 casual, but I wouldn't call it an interview, so, yes, that's
17 correct.

18 Q Okay. Did you attempt to gather any of the relevant
19 documents such as internal notes or memorandums relating to
20 the negotiations from '09 or '05 or '06 or anything of that
21 nature?

22 A I don't know.

23 Q I believe you testified the biggest weakness to the claim
24 regarding the invalidity of the casino revenue pledge was the
25 opinion letter, the legal opinion letter, the City Council

1 ordinance, the letter from the state gaming board, and at
2 your deposition you called it the acquiescence of the parties
3 to the transaction and the fact that nobody raised
4 objections. Do you recall identifying those things as
5 weaknesses?

6 A Yes.

7 Q Okay. But you don't actually know if anyone raised
8 objections back in '09 or '05 or '06; correct? You didn't
9 interview any of the people that were involved?

10 A No. I think objections were raised to the transaction by
11 City Council people if not others, but they were voted upon
12 and overruled.

13 Q And I believe you also had stated that the state gaming
14 board letter was something that you looked at in respect to
15 the casino revenue pledge; correct?

16 A Yes.

17 Q And I think at your deposition you mentioned it like four
18 or five times that that was something that you had relied
19 upon --

20 A That was an issue, yes.

21 Q -- in coming to your conclusion?

22 A Yes.

23 MS. GREEN: Can we pull up Exhibit 11, please, City
24 Exhibit 11?

25 BY MS. GREEN:

1 Q And you recognize this as the collateral agreement from
2 2009; correct?

3 A Yes.

4 Q And if we scroll to the very end of the collateral
5 agreement, I believe it's page 71. And this is a copy of the
6 letter that you've been referring to from the state gaming
7 board; correct?

8 A Yes.

9 Q And if we could blow that letter up just a little bit --
10 it's dated June 18th, 2009. The subject line states,
11 "Irrevocable instructions directing the three licensed
12 Detroit casinos to electronically transfer city taxes to a
13 custodial account." Do you see that, Mr. Orr?

14 A Yes.

15 Q And the irrevocable instructions that it references, in
16 the top line it states, "We're in receipt of a letter from
17 the city's outside gaming counsel transmitting to and
18 advising the board of certain irrevocable instructions." Do
19 you see that?

20 A Yes.

21 Q And those irrevocable instructions are the ones, as you
22 understand, that tell the three casinos to wire certain funds
23 to U.S. Bank; correct?

24 A Yes.

25 Q And you might recall all of this from your deposition.

1 We went through, and just prior to this letter attached to
2 the collateral agreement there are three separate sets of
3 irrevocable instructions each identifying certain funds to be
4 transferred electronically to U.S. Bank; correct?

5 A Yes.

6 Q And after each of those irrevocable instructions, there's
7 a confirmation letter from the casino saying, yes, we got
8 your letter, and, yes, we will do as we are told.

9 A I believe so.

10 Q Okay. So we won't have to go through all of those again.
11 And as the letter states, they received those irrevocable
12 instructions; right?

13 A Yes.

14 Q But this letter nowhere states anything about, for
15 instance, signing off on the casino revenue pledge in
16 general; correct?

17 A Yes.

18 Q Nowhere does it say that the gaming board has reviewed
19 the validity of the city's pledge of the casino revenue and
20 that for purposes of securing the city's financial
21 obligations under the collateral agreement, that's all well
22 and good under Michigan law. Doesn't say that; right?

23 A It does not say that.

24 Q And it doesn't say that the city is hereby authorized to
25 pledge the casino revenue and that this transaction fully

1 complies with Section 12 of the Gaming Act; right?

2 A Correct.

3 Q In fact, it doesn't say anything about Section 12 of the
4 Gaming Act, does it?

5 A No. It just mentions the Gaming Act generally.

6 Q Okay. We discussed that you did not do interviews with
7 any people that may have been involved in the swap
8 transactions or the collateral agreement; correct?

9 MS. GREEN: Can we pull up Exhibit 1005?

10 BY MS. GREEN:

11 Q Mr. Orr, this has been admitted into evidence as Exhibit
12 1005. Can you take a moment and read the top paragraph of
13 this e-mail and tell me if you have seen this e-mail before?

14 A Okay.

15 Q As you can see at the top, it's dated September 4th,
16 2013. At the top it says, "Thanks. I'll share with Jones
17 Day."

18 A Um-hmm.

19 Q I realize that you're no longer performing as an attorney
20 for Jones Day, but was this ever, indeed, shared with you,
21 this e-mail?

22 A No.

23 Q And you read the substance of the e-mail from Thomas
24 Gavin?

25 A I just read it.

1 Q Okay. So Jones Day never forwarded this e-mail to you?

2 A I don't recall ever seeing this e-mail.

3 Q So then Miller Buckfire also never forwarded the e-mail
4 to you, to your knowledge?

5 A I don't recall ever seeing the e-mail.

6 Q Does it surprise you to learn that the swap
7 counterparties themselves may have thought that the casino
8 pledge wouldn't survive the bankruptcy filing?

9 A No.

10 Q Does it surprise you that the first time you're hearing
11 about this is in the evidentiary hearing when maybe you could
12 have used this during the mediation last week?

13 A No. At this point, nothing surprises me.

14 Q Would you have conducted a different factual
15 investigation last week or maybe used it as leverage when you
16 were negotiating your new terms?

17 A Maybe, maybe not.

18 Q With respect to the privilege log that was just produced
19 yesterday, I have just a few follow-up questions, and I know
20 your Honor said you'd permit some limited questions. Since
21 it's a new document, we don't have copies, but I do have an
22 electronic copy that our trial consultant can pull up so you
23 can follow along, Mr. Orr.

24 THE COURT: Let's put an exhibit number on it.

25 MS. GREEN: I can move -- I just didn't know if

1 you'd want it moved or not yet. I wasn't sure if you were
2 going to permit more questions.

3 THE COURT: It's up to you whether to offer it into
4 evidence or not. I just want an exhibit number on it since
5 we are displaying it to the witness for identification
6 purposes.

7 MS. GREEN: Okay. It would be 1018, I believe, but
8 I can confirm that. I just wasn't sure if you were going to
9 let me get any questions out before they objected to
10 privilege, so I didn't have a number on it yet. Wasn't going
11 to assume.

12 THE COURT: All right. 1018 it is.

13 (Retirement Systems Exhibit 1018 marked at 2:33 p.m.;
14 changed at 2:35 p.m. to Retirement Systems Exhibit 1023)
15 BY MS. GREEN:

16 Q Do you recognize this document, Mr. Orr?

17 A No.

18 Q Do you recognize -- if you look at the substance, does
19 any of that ring a bell as to documents that you would have
20 reviewed in connection with this matter?

21 A I've never seen the privilege log, but I may have
22 reviewed some of these documents.

23 Q Okay. If you could scroll down to entry number eight --
24 and I apologize because I would have asked you this at your
25 deposition a few days ago, but we didn't have this, so

1 there's a draft letter authored by Jones Day requesting
2 attorney general opinion. Do you see that entry?

3 A Yes.

4 Q And this was done back in May of 2013?

5 A Yes.

6 Q Which individual at the AG's office did you make this
7 request to?

8 A I don't recall a request ever being made.

9 Q So this was a draft letter, but it was never sent?

10 A As far as I know, yes.

11 Q Do you know the substance of the letter? Was it asking
12 an opinion that the pledge was invalid?

13 A No. I don't know the substance of the letter.

14 Q Was it a letter asking the pledge was valid?

15 A I don't recall seeing --

16 Q Don't know at all.

17 A -- the draft letter.

18 Q Did you have any conversations with the attorney
19 general's office about seeking an opinion about the legality
20 of the casino revenue pledge?

21 A No.

22 Q Did someone else from your team investigate this as a
23 potential defense to raise in connection with the swap
24 termination payment amount negotiations?

25 A I believe they did, but I didn't have any personal

1 involvement with the letter or the draft.

2 Q So you --

3 THE COURT: We already have a 1018. What is the
4 next number? Do we know?

5 ATTORNEYS: 1023.

6 MS. GREEN: I guess we've admitted a lot more.

7 THE COURT: Sorry?

8 MS. GREEN: 1023.

9 THE COURT: 1023. Okay.

10 (Retirement Systems Exhibit 1023 marked at 2:35 p.m.)

11 BY MS. GREEN:

12 Q The next one I have a question on is slightly below that
13 at the bottom. I think it's entry ten. There's a draft
14 emergency manager order declaring the city's pledge of
15 wagering tax property under the 2009 collateral agreement
16 illegal and void.

17 A Yes.

18 Q Now, you're a lawyer, but you haven't been serving as a
19 lawyer in your EM capacity; correct?

20 A Correct.

21 Q Did you draft this order?

22 A No.

23 Q What was the basis for the draft order?

24 A I'm not sure.

25 MR. SHUMAKER: Objection, your Honor. The witness

1 has said he didn't draft it, and it could call for privileged
2 communications.

3 MS. GREEN: I'll restate my question.

4 BY MS. GREEN:

5 Q Have you ever read a draft order on these -- on this
6 topic?

7 A No.

8 Q Do you know who did draft an order that would have
9 ostensibly eventually been signed by you? Do you know who
10 drafted the order?

11 A No, I don't know.

12 Q And you have no idea what the basis as to why the
13 collateral agreement would be illegal and void would be in
14 your draft order?

15 A No. I think as part of our litigation strategy I'd
16 instructed our attorneys to prepare various lines of attack,
17 but I never saw the actual draft order.

18 Q In preparing for the legal negotiations -- or I'm
19 sorry -- the negotiations relating to the swap termination
20 payment, you didn't have a debriefing with Ken Buckfire
21 heading into the negotiations where you sat him down and you
22 advised him of all the various legal defenses and claims;
23 correct?

24 A Not that I recall.

25 Q Okay. And would it surprise you to know that your lead

1 negotiator went into the negotiations assuming that all of
2 the liens were valid?

3 A No.

4 Q Who is Brent Hartzell?

5 A Brent Hartzell is a city employee in the budget
6 department.

7 Q And he reports to you on budget issues; correct?

8 A Reports through the finance director and CFO to me.

9 Q Okay.

10 A He's an indirect report.

11 Q And you've had opportunities to work with him over the
12 2014 fiscal year budget?

13 A Yes.

14 Q Do you recognize --

15 MS. GREEN: Let's pull up Exhibit 1007, please.

16 MR. SHUMAKER: Your Honor, there is an objection.

17 MS. GREEN: Your Honor, I would move --

18 MR. SHUMAKER: There's an objection standing for
19 this document.

20 MS. GREEN: Sustained for this?

21 MR. SHUMAKER: No.

22 ATTORNEY: Standing.

23 MR. SHUMAKER: Standing.

24 MS. GREEN: Yeah. I would move for its admission,
25 your Honor, and that's why I turned around to look at you to

1 object, so --

2 MR. SHUMAKER: I'm sorry. The exhibit is Number --

3 MS. GREEN: 1007.

4 MR. SHUMAKER: -- 1007. Relevance is the objection,
5 your Honor.

6 THE COURT: What is the document?

7 MS. GREEN: It's a memo regarding the budget for
8 2014 from the interim budget director to the emergency
9 manager. He signed it.

10 THE COURT: Are you offering it?

11 MS. GREEN: I was just going to, and then he
12 objected.

13 THE COURT: All right. Why don't you establish the
14 foundation? Then we'll see if there's -- what the objection
15 is.

16 BY MS. GREEN:

17 Q And did Mr. Hartzell, indeed, give you a memo on October
18 24th relating to the October -- I'm sorry -- the fiscal year
19 2014 budget for the city?

20 A Many memos come back. I don't know if it's October 24th,
21 but he very well may have.

22 Q Okay. Do you recall signing a memo where \$95 million
23 was moved out of the general fund to a restructuring fund?

24 A Yes.

25 Q Okay.

1 MS. GREEN: I would move for its admission, your
2 Honor.

3 MR. SHUMAKER: Same objection, your Honor.
4 Relevance.

5 THE COURT: All right. The objection is overruled.
6 Exhibit 1004 -- is that the number?

7 MS. GREEN: 1007.

8 THE COURT: 1007 is admitted.

9 (Retirement Systems Exhibit 1007 received at 2:39 p.m.)
10 BY MS. GREEN:

11 Q And is this the memo that we just discussed, Mr. Orr?

12 A Yes.

13 Q Okay. And on the first page the top sentence says that
14 certain debt service appropriations for the pension
15 obligation certificates and limited tax obligation debt -- do
16 you read that right there in the first paragraph?

17 A Yes.

18 Q It says it's being reallocated for general operational
19 restructuring purposes.

20 A Yes.

21 Q Okay. And in the second paragraph it talks about how for
22 fiscal year 2014 there's going to be 95 million shifted from
23 certain appropriations in the general fund to a general
24 restructuring fund. Do you see that?

25 A Yes.

1 Q And if we scroll through the document, there are
2 various -- we'll wait for it to scroll. There are certain
3 funds being taken away from the police and fire and certain
4 other funds from City Council and recreation department and
5 public lighting and finance department and things of that
6 nature and being moved to a restructuring fund; correct?

7 A Yes.

8 Q And then you signed this document on October 25th?

9 A Yes.

10 MS. GREEN: I don't have anything further, your
11 Honor.

12 THE COURT: One second, please, sir.

13 MR. GOLDBERG: Certainly, if I may.

14 THE COURT: And I promised you this earlier. By my
15 count, the city has 143 minutes remaining and the objecting
16 parties 227.

17 MR. GOLDBERG: Thank you, your Honor. Jerome
18 Goldberg appearing on behalf of interested party David Sole.

19 CROSS-EXAMINATION

20 BY MR. GOLDBERG:

21 Q Good afternoon, Mr. Orr.

22 A Good afternoon, Mr. Goldberg.

23 Q Mr. Orr, for the court-ordered mediation for December
24 23rd and December 24th, isn't it true that the order from
25 Judge Rosen mandated that the parties were to have

1 individuals there with settlement authority?

2 A Yes.

3 Q And isn't it true that you testified in your deposition
4 that, in fact, Judge Rosen informed you that the banks did
5 not have someone with settlement authority there on December
6 23rd?

7 A Yes. At least one of them, yes.

8 Q And that, in fact, he had to threaten to hold them in
9 contempt of court just to get them to agree to even this
10 settlement. Is that not true?

11 A He threatened to enter a default judgment.

12 Q I'm sorry. Default judgment. Now, just to be clear, the
13 \$165 million swap termination loan with Barclays, is that
14 subject to similar terms to the previous swap termination
15 loan?

16 A Yes.

17 Q So the interest rate would be anywhere from 6.5 to 8.5
18 percent -- 5.5 to 8.5 percent?

19 A Yes. Whatever was on the chart, yes.

20 Q Okay. I mean it's true that once bankruptcy is over,
21 once the bankruptcy is ended and the loan becomes due, the
22 interest rate goes up an extra two percent; correct?

23 A Well, there's a mechanism by which the interest rate can
24 go up, yes.

25 Q So it could go up from anywhere -- depending on what the

1 final interest rate was on the first loan, it could go up --
2 it could be 5.5 percent or up to 8.5 percent; correct?

3 A If that's the math, yes.

4 Q And the loan -- the \$165 million loan is pledged by a \$4
5 million a month pledge secured against income tax revenue?

6 A Yes.

7 Q And, in fact, that amounts to \$48 million per year, four
8 million times twelve; correct?

9 A Yes.

10 Q And do you recall that in the city's motion, it indicated
11 that the city's income tax revenue for this year was
12 approximately \$232 million?

13 A If that was in the motion, I'll stand by it, yes.

14 Q Okay. So what we're talking about is for approximately
15 the next four years paying 20 percent of city income tax
16 revenue to pay off Barclays and UBS -- UBS and Bank of
17 America through Barclays. Is that not correct?

18 A Roughly, yes.

19 Q And, in fact, 165 million at 8.5-percent interest would
20 be approximately 30 million in interest. Does that sound
21 right to you?

22 A Approximately that range.

23 Q Okay. So we'll be paying -- up to \$195 million over the
24 next four years from city tax revenues will be diverted to
25 pay off UBS -- to pay off two banks, UBS and Bank of America,

1 through Barclays?

2 A It could, yes.

3 Q Okay. And those payments are going to be going on after
4 you're gone as emergency manager and probably gone from
5 Detroit. Is that not true?

6 A There's an expectation that there would be an exit
7 facility financed that they could.

8 Q But as of this point, there is no exit facility in place?

9 A That is correct.

10 Q Okay. In contrast, the -- I believe the testimony in
11 the -- both depositions was that the swap payments, the
12 hedging payments from 2008 to 2012 totaled -- I believe it
13 was \$247 million. Do you recall that figure?

14 A Approximately that amount of money.

15 Q I can show you your deposition, but we're in --

16 A Yeah. That's fine, yeah.

17 Q -- the ballpark; right?

18 A Yeah, um-hmm.

19 Q And that in 2013 it would be about another 45 to 50
20 million. Is that a fair statement?

21 A That's a fair statement.

22 Q So we're talking about \$300 million having been paid to
23 UBS and Bank of America since 2008 on the hedging
24 derivatives, on the interest rate swaps?

25 A Since when?

1 Q Since 2008.

2 A Roughly that amount.

3 Q Okay. And that -- and in addition to that, if the city
4 was successful in its litigation in recovering -- in getting
5 the swaps declared void ab initio, as you testified,
6 potentially that amount could be recovered; correct?

7 A Yes.

8 Q And, in fact -- and any amounts moving forward,
9 termination amounts in the neighborhood of 200 million also
10 would be eliminated?

11 A Yes.

12 Q So rather than paying \$165 million, we could be
13 recovering up to \$300 million?

14 A Yes.

15 Q I wanted to talk a little bit -- go over a little bit
16 the -- and I won't go into great detail because I thought you
17 testified quite well about what -- the claims that the city
18 is making. One of them is fraud based on problems with the
19 LIBOR as documented relative to UBS. Is that not correct?

20 A Yes.

21 Q Another one was that the counterparties -- and I'm
22 talking about the equitable claims or claims around fraud,
23 breach of contract based on the implied breach of the fair
24 dealing and also unjust enrichment claims. One of them --
25 another was that the counterparties had superior knowledge to

1 the city when they entered into this complex financial
2 transaction and had a duty to clearly make the terms of this
3 transaction clear to the city; correct?

4 A Yes.

5 Q That they misrepresented that there was a low risk of
6 default or termination in connection with the swaps?

7 A Yes.

8 Q That they did not explain to the city that the -- the
9 potential dangers that a termination event could hold to the
10 city, meaning that it would immediately call in potentially
11 tens of millions or hundreds of millions in interest
12 payments; correct?

13 A Interest payments and the termination fee, yes; correct.

14 Q Yes, yes. I'm sorry. Correct. And that the city was,
15 as you described it, a ticking bomb for this kind of default
16 based on a lowering of bond rating based on the city's
17 financial history?

18 A Yes.

19 Q Are you aware that representatives of Fitch Ratings
20 Service and Standard & Poor's were at the table when the
21 swaps were being voted on or being debated in City Council?

22 A I didn't know it was Fitch and S&P, but I had heard that
23 ratings agencies were present.

24 Q And they encouraged the city? They were supportive of
25 the transaction?

1 A I don't know that.

2 Q Okay. And, in fact, it was these same rating agencies
3 that triggered the default in 2009 by the lowering of the
4 city's bond rating; correct?

5 A I know the ratings were lowered. I don't know if it was
6 S&P and Fitch.

7 Q Okay. You testified earlier that the chief financial
8 officer of the city, Sean Werdlow, took a job with -- I
9 believe it was with SBS. Are you aware that he took that job
10 in November of 2005?

11 A Yes.

12 Q And that was within five months after the swaps were
13 completed?

14 A Yes.

15 Q And you testified that that at least raises a red flag;
16 correct?

17 A It raises concern, yes.

18 Q You testified that you spoke with the SEC about their
19 involvement in investigating these matters, and I believe in
20 your deposition you testified that they were willing to have
21 further discussions; is that correct?

22 A Yes.

23 Q And I'm not going to try to do a big impeachment here. I
24 mean you know that I asked you about that issue in -- August
25 30th, and at that point you testified that there hadn't been

1 discussions as of that date.

2 A Right.

3 Q So these discussions must have taken place between August
4 30th and the present date?

5 A I believe that's fair.

6 Q Okay. I asked you before in Exhibit 1328, which has been
7 admitted -- I want to clarify the record. It says in the
8 record it was admitted over objection. I think the record
9 indicates there wasn't an objection to that, but either way,
10 Exhibit 1328 is the July 31st, 2012, SEC report on municipal
11 securities markets. You have not -- you're not sure if you
12 read that report or not?

13 A That's correct.

14 Q Okay. Are you aware that that report documents seven
15 enforcement actions by the SEC against municipalities in
16 similar situations to Detroit, including Jefferson County,
17 Alabama, and Orange County, California, both cities that
18 entered bankruptcy?

19 A As I said, I hadn't read the report. I'm aware that
20 there were enforcement actions.

21 Q And are you aware that it all -- that there were five
22 other settled enforcement actions by the SEC against major
23 financial institutions, including Bank of America, UBS,
24 JPMorgan, Wachovia, and GE Funding?

25 A I'm aware the SEC had settled several other

1 investigations, yes.

2 Q Okay. Have you familiarized yourself with the 2011 SEC
3 final judgment against UBS, which actually -- where one of
4 the -- one of the transactions that was raised in that
5 judgment was actually one dealing with the water board? Have
6 you familiarized yourself with that judgment? I did raise it
7 to you in your previous deposition.

8 A Yeah, you did. Yes, sir, you did. I'm not aware of that
9 one in particular.

10 Q Okay. Are you aware that that judgment specifically
11 raises some of the issues that you raised, the fact that the
12 duty to disclose by a financial institution includes not
13 disclosing relevant information to a municipality in
14 connection with an interest rate swap because of the lack --
15 uneven knowledge of the parties?

16 A I'm aware of the concept, although not that particular
17 investigation.

18 Q Fair enough. Are you aware that pursuant to the
19 Bankruptcy Code, the SEC has a right to intervene in a
20 Chapter 9 bankruptcy?

21 A Yes.

22 Q If the SEC was to intervene both in this bankruptcy and
23 in the litigation, that would dramatically lower the cost of
24 litigation on behalf of the city, would it not?

25 A It might or it might not.

1 Q Well, the SEC has -- as a government agency, has people
2 with expertise in litigating these areas. You would agree
3 with that, would you not?

4 A Yes, but sometimes agencies don't necessarily represent
5 the same interest as a principal litigant.

6 Q Okay. And the SEC, just to be clear, could actually
7 intervene not just in a lawsuit but in the bankruptcy
8 proceedings on fairness where the question of equitable
9 subordination could be addressed. Is that not correct, if
10 you know?

11 A I believe the SEC has the ability to intervene as an
12 interested party. I don't know if in particular to your
13 question.

14 Q Okay. That's a good answer. You probably know more than
15 I know about it. Have you spoken with a representative --
16 strike that. The Obama administration has people assigned to
17 work with you in terms of lending support in conjunction with
18 the emergency management and getting out of bankruptcy. Is
19 that not true?

20 A The federal government has assigned a specific treasury
21 officer as a liaison for the federal government as part of
22 the operational restructuring. I don't know if his role or
23 specific delegation of authority includes the authority to
24 involve themselves in the bankruptcy.

25 Q And who is that individual?

1 A Don Graves.

2 Q Don Graves?

3 A Um-hmm.

4 Q Have you spoken with him about potential federal
5 involvement or SEC involvement in the question of trying to
6 recover on the interest rate swaps?

7 A Not that particular question.

8 Q Okay. You would acknowledge that the gap between the
9 floating interest rate and the fixed interest rate that's the
10 basis for the derivative payment dramatically changed in
11 approximately 2008. Is that not correct?

12 A Yes. 2008, 2009, yes.

13 Q And that was due to a precipitous drop in interest rates?

14 A Yes. There are a number of reasons, but, yes, that was
15 why.

16 Q And, in fact, what happened was the LIBOR rate at that
17 point and since that point has been around .5 percent to --
18 added to a .3-percent and 3.4 -- .34-percent margin, it's the
19 difference between that and the 6.3-percent fixed interest
20 rate that the city pays the banks that leads to the POC --
21 the pension obligation interest rate payment; correct?

22 A Generally the concept, yes. The numbers are approximate
23 in terms of where LIBOR was versus the rate of the interest,
24 yes.

25 Q Right. I mean and generally the -- are you familiar with

1 interest rate swaps, with the machinations of them?

2 A I am now, yes.

3 Q And generally speaking, the idea under the best
4 circumstances would be that the floating rate and the fixed
5 interest rate stay relatively stable so that the -- and the
6 fixed rate so that the parties don't face this calamitous
7 change that occurred in 2008 in the City of Detroit?

8 A I suppose for stability, but it depends upon which
9 rate -- which side of the swap you're on.

10 Q No question about it. And we were on the wrong side of
11 the swap.

12 A We were on the right side for a little while, and then we
13 were very much on the wrong side.

14 Q All right. And would you agree with me that the
15 precipitous drop in interest rates in 2008 was a product of
16 the financial crisis that occurred throughout the U.S. with
17 the collapse of Goldman Sachs, the subprime mortgage crisis,
18 and the -- and just generally the financial crisis that
19 occurred in the country in 2007, 2008?

20 A Yes. There was a financial meltdown for a number of
21 reasons that have been written about, including that, I
22 suppose.

23 Q And, in fact, the reduction of interest rates to near
24 zero was part of the Federal Reserve's bailout of the banks
25 in order to try to stimulate the banks and keep them moving

1 during that period.

2 A Yes.

3 Q Would you agree with that?

4 A In the last few months of '08 and '09 I think the federal
5 government bought back \$1.75 trillion of securities, QE1.

6 Q Exactly. Are you aware that the City of Detroit
7 experienced 67,000 mortgage foreclosures between 2005 and
8 2007 according to a City of Detroit report?

9 A I'd read that report somewhere. I'm not sure where I
10 read it, and I think you and I have discussed it before, too.

11 Q And, in fact, the report notes that the -- 73 percent of
12 all mortgage loans entered into in the city during that
13 period were subprime loans, meaning they were at least three
14 percent above the prime rate?

15 A I think that's generally correct.

16 Q And that, in fact, it was the subprime crisis, the
17 subprime -- the imposition of so many subprime loans that
18 precipitated this foreclosure -- in part precipitated this
19 foreclosure epidemic in Detroit?

20 A I read reports that demonstrated there were
21 disproportionate foreclosures in the City of Detroit.

22 Q Okay. Are you aware that the report noted that of the
23 67,000 properties foreclosed between 2005, 2007, as of
24 January 2009, 65 percent remain vacant?

25 A I don't know if I know those specific numbers, but I

1 remember hearing that there were -- there are obviously a lot
2 of vacant properties, yes.

3 Q Have you considered as part of the equitable challenge to
4 UBS and Bank of America in connection with the swaps that
5 the -- that both of them were prime -- had tremendous
6 involvement in the subprime lending crisis, and, in fact,
7 they ended up benefitting from their own misdoings, in
8 essence, by causing the crisis that led to this drop in
9 interest rates from which they now have profited to the tune
10 of \$300 million?

11 A I'm aware of allegations in that regard.

12 Q Okay. As emergency manager and especially when you enter
13 into an agreement like this, I believe the way Judge Rhodes
14 put it, it's your duty -- and it's examined to see -- to make
15 sure that it's in the best interest of the estate or of the
16 debtor, which is the City of Detroit.

17 A Yes.

18 Q And, of course, the City of Detroit is the residents of
19 Detroit; correct?

20 A That includes the residents of Detroit.

21 Q Primarily it includes the residents even over creditors;
22 isn't that --

23 A The interest of the residents is of grave concern, yes.

24 Q Don't you think the residents would stand to benefit more
25 from a 500 -- potential \$500 million recovery than to see 20

1 percent of their tax dollars turned over to two banks that
2 helped contribute to the destruction of their neighborhoods?

3 A If the claims were successful and you're able to achieve
4 that kind of result, that would certainly provide a benefit,
5 but in the meantime you might not have the stability and
6 revenue stream that you need to help reinvent and restructure
7 the city.

8 Q But, in fact, the revenue stream is going to be decreased
9 over the next four years just by paying off the swap
10 termination.

11 A The revenue stream will be dedicated to pay off some of
12 the debt, the money we borrow to deal with the swap
13 termination, but it will free up other revenue that we can
14 use to go forward.

15 Q Okay. Give me one minute. I'm almost done. I find it
16 interesting your testimony that under PA 436 at least
17 potentially you would have had authority to abrogate the
18 contracts that let -- with UBS -- that allowed UBS to trap
19 revenue in connection with the interest rate swaps. Is that
20 what you testified to?

21 A Yes, the irrevocable letters of instruction.

22 Q And you indicated that you didn't pursue that or didn't
23 act on that because of your concerns about litigation over
24 it?

25 A Well, it's part of the overall settlement. That was one

1 of the issues that we were concerned about.

2 Q In fact, though, there are numerous contracts that -- as
3 the emergency manager, that you've acted within your power to
4 abrogate. Is that not correct?

5 A I've abrogated some, yes.

6 Q I mean there are union contracts that were abrogated
7 because of the --

8 A Yes.

9 Q You've taken the position and won that position in this
10 court that you have the right to even go after pensions in
11 deference to the -- despite the guarantees in the Michigan
12 Constitution.

13 A I'm not trying to go after pensions. I'm trying to
14 rationalize the environment so we can pay them on a going
15 forward basis on a reasonable number.

16 Q No. I appreciate that, but I'm just saying that there's
17 been a tremendous amount of litigation over that issue, has
18 there not?

19 A Yes.

20 MR. GOLDBERG: Okay. I have no further questions.
21 Thank you, Mr. Orr.

22 THE COURT: Any other questions on the objectors'
23 side? Any redirect?

24 MR. SHUMAKER: No redirect, your Honor.

25 THE COURT: All right, sir. You are excused.

1 THE WITNESS: Thank you, your Honor.

2 (Witness excused at 3:00 p.m.)

3 THE COURT: Does the city have any further
4 witnesses?

5 MR. SHUMAKER: We do not, your Honor, but
6 Mr. Hertzberg would like to address you.

7 THE COURT: Mr. Hertzberg.

8 MR. HERTZBERG: Yes, your Honor. During the break
9 this morning, I spoke with Mr. Goldberg -- excuse me -- in
10 regard to Mr. Turbeville, his proposed witness. I thought we
11 had an understanding that we would counter-designate on the
12 deposition that was taken and submit it in that fashion
13 because Mr. Turbeville was not available to appear today, and
14 based upon that I have someone -- I have had someone in my
15 office doing that. Mr. Goldberg tells me now that he is
16 confused and that's not what he understood. We have no
17 further witnesses at this point. We are in the process of
18 counter-designating the deposition for submission, and I
19 think it's totally unfair and prejudicial to have him bring a
20 witness in on Monday. We've been aware of this date set by
21 the Court as far back as two weeks ago that this would be the
22 date continued for the hearing on approval of the assumption.
23 The Court has been aware that other people, including myself,
24 have had scheduling issues but has held us to the schedule,
25 and I'd ask that the Court do the same here.

1 THE COURT: Sir.

2 MR. GOLDBERG: First of all, your Honor, I want to
3 make clear that there was a misunderstanding. I was not
4 agreeing to counter-designate. I was just saying that if the
5 Court was not inclined to allow Mr. Turbeville to testify in
6 person, then I would be, you know, open to the idea that we
7 would allow us to bring in his testimony through depositions,
8 and I apologize if there was a misunderstanding with
9 Mr. Hertzberg. We've tried to cooperate with him very much
10 on this issue.

11 As far as his appearance, I feel Mr. Turbeville's
12 appearance would be helpful on the issues that were raised by
13 Mr. Orr in this deposition in terms of creating a factual
14 predicate for the Court to be -- to make the determination as
15 whether or not there's a basis to move these equitable issues
16 forward later on in the bankruptcy in a fuller trial. As I
17 stated, I did -- Mr. Turbeville did come in for the previous
18 hearing. He is not -- he was not available today, as I made
19 clear to them, and was open about it. He is available to
20 come in Monday, and we are prepared to bring him in, you
21 know, and that's all I can say, your Honor. I appreciate the
22 Court's -- whatever ruling the Court makes. That's the
23 situation, and, you know, he's actually doing this based on
24 us paying his airfare without even charging us for the
25 appearance, which is a very -- which is a gesture that we

1 appreciate, but, on the other hand, I appreciate the
2 scheduling concerns of the Court and whatever the Court
3 rules, but I just really want to make clear that there was no
4 intent to mislead Mr. Hertzberg, and if the Court wanted us
5 to do it through deposition, I would be happy to do it that
6 way or however the Court decides. Thank you.

7 MR. HERTZBERG: Your Honor, one last thing.

8 THE COURT: Sir.

9 MR. HERTZBERG: We were not made aware until
10 yesterday that he would not be here today, so it's not like
11 we were put on notice two weeks ago either, so I think the
12 proper way to proceed is to have the parties designate
13 portions out of the deposition for submission to the Court
14 for review.

15 THE COURT: All right. In the circumstances, I
16 agree that submission of the appropriate portions of the
17 transcript of his deposition is the better approach here than
18 to delay these proceedings. And if there are no other
19 witnesses, we should discuss how to proceed with closing
20 arguments. Is the city ready to proceed now, or do you want
21 to start afresh on Monday morning? And just so we have a
22 count again, I'm showing 143 minutes for the city and 207 for
23 the objecting parties.

24 MS. ENGLISH: Your Honor, just before we start
25 talking about closing arguments, I think we do have a few

1 things on our side of the table to take care of.

2 THE COURT: Oh, yes. That was mentioned to me.
3 You're right.

4 MS. ENGLISH: Okay. So, first of all, now that the
5 city has rested, the objectors would like to bring a motion
6 for a directed finding that the city has not presented
7 evidence to meet its burden under 9019. As the Court knows,
8 the Court needs to make an objective evaluation of the claims
9 and defenses that are being settled in order to determine
10 whether this is a fair and equitable settlement. The Court
11 needs to make an independent analysis. Based on the evidence
12 that has been presented by the city, the only evidence that
13 is before the Court really on the claims and defenses is
14 Mr. Orr's testimony as to what his attorneys told him, so
15 we've got a hearsay problem, and we've got a privilege
16 problem because they have not produced any of the underlying
17 pieces of paper, the evidence, on privilege grounds, so we
18 think, therefore, that the evidence is not before the Court
19 on which you can actually make a reasoned, objective,
20 independent analysis yourself, and they haven't met their
21 burden under 9019, so we'd move for a directed finding.
22 Thank you.

23 MR. SHUMAKER: Your Honor, Greg Shumaker of Jones
24 Day for the City of Detroit. Obviously we disagree
25 wholeheartedly with any motion. We believe Mr. Orr has laid

1 out in great detail today all of the claims that he
2 considered, the strengths, the weaknesses, the factual bases,
3 and although your Honor can and will make an objective
4 assessment as to whether the settlement of those claims is
5 reasonable, there is no reason to grant a motion for directed
6 verdict because we think there's more than sufficient
7 evidence for the Court to find that the motion can be
8 assumed -- I mean that the forbearance agreement can be
9 assumed and approve it under Bankruptcy Rule 9019. And we
10 also firmly believe, as I stated before, that the city is not
11 required to waive privilege in order to carry its burden.

12 THE COURT: All right. The Court will decline to
13 render judgment at this time under the applicable rule. Are
14 there any other matters on the objectors' side?

15 MR. PEREZ: Your Honor, Alfredo Perez on behalf of
16 FGIC. Your Honor, we would move into evidence FGIC's Exhibit
17 305, which is the rehabilitation order pursuant to which FGIC
18 went into rehabilitation, and FGIC Exhibit 306, which is the
19 order approving the FGIC plan of rehabilitation. Your Honor,
20 I had been carrying certified copies with me. I just didn't
21 bring them today, so if I could substitute those on Monday --
22 they're self-authenticating under Rule 90 --

23 THE COURT: Any objections to 305 and 6?

24 MR. SHUMAKER: Yes, your Honor. I have no idea what
25 the relevance might be.

1 MR. PEREZ: Your Honor, the relevance is as follows.
2 In connection with their argument as it relates to their
3 ability to terminate the swap provision, they rely on Section
4 6 of the swap agreements, and they basically say that FGIC
5 has waived its right to assert its control rights because of
6 the fact that it's defaulted since it has -- since their
7 ratings was decreased, et cetera. Pursuant to these orders,
8 those defaults are cured, and we don't have -- we're not
9 bound by those things, your Honor, so it's, in essence, a
10 contract amendment to our insurance policy.

11 THE COURT: All right. That's arguable. The Court
12 will admit Exhibits 305 and 306.

13 (FGIC Exhibits 305 and 306 received at 3:08 p.m.)

14 MS. ENGLISH: I've got one exhibit as well. You'll
15 recall at the very start of these proceedings, I wanted to
16 address the admissibility of Ambac Exhibit 404, and the
17 objection that was raised by the city at that time was that
18 it -- was to authentication. This is a document that was
19 produced by the city that was logged in its data room. It is
20 self-authenticating under both 90 -- Rule 901 and Rule 902 in
21 that it is a public record that was posted on the Municipal
22 Securities Rulemaking Board, which is a site operating in
23 conjunction with the SEC regulating the municipal market. It
24 is also a book, pamphlet, or other publication purporting to
25 be issued by a public authority, namely the city.

1 THE COURT: Okay.

2 MR. SHUMAKER: Your Honor, the city withdraws its
3 objection.

4 THE COURT: Exhibit 404 is admitted

5 (Ambac Exhibit 404 received at 3:09 p.m.)

6 MR. GOLDBERG: Your Honor, I also had a number of
7 exhibits to which there were objections that I'd like to
8 address.

9 THE COURT: Go ahead, sir.

10 MR. GOLDBERG: Maybe I'll begin with the easiest
11 one.

12 THE COURT: Actually, if you could go in numerical
13 order, that would be the easiest thing.

14 MR. GOLDBERG: On, no problem. Okay. If you don't
15 mind, your Honor, I just left one document.

16 THE COURT: Sure.

17 MR. GOLDBERG: 1302 I'll withdraw, your Honor. 1307
18 is a newspaper article, and it along with -- and I cite
19 several newspaper articles throughout this 1307. I cite an
20 article on 1317 on termination fees, 1318. I would submit
21 that we are not submitting these articles for the truth of
22 the matter asserted. The articles are being submitted
23 essentially to give background evidence on the scope of the
24 interest rate swap and LIBOR scandal; in other words, on
25 background articles on this -- issues that go to whether or

1 not a record can be made to move forward on these issues to a
2 trial later on, as I believe is the standard articulated by
3 your Honor in your ruling at the pretrial.

4 In Yarborough versus City of Warren, which is 383 F.
5 Supp. 676, the Court in the Eastern District discussed
6 specifically how newspaper articles, if they're not
7 introduced for the purposes of the truth of the matter
8 asserted but as background evidence, as background to a
9 greater understanding of viewing the concerns that are at the
10 base of the litigation, can be admissible, and that's the
11 basis for the various newspaper articles that we were
12 submitting. They discuss the LIBOR scandal. They discuss
13 the ISDAfix articles. They discuss problems with termination
14 fees, and essentially they're to help the Court get a
15 background and overview on the scope of this problem to put
16 it -- help put it into the context of the particulars.
17 They're not being -- we're not asking for their admission for
18 the truth of the matter asserted, especially relative to
19 whether or not these issues occurred in this case, but they
20 go, again, to whether a record can be made at this point in
21 the proceedings to move forward on these issues to go to
22 trial later on in the bankruptcy, and so that's the basis for
23 the newspaper articles that we cited.

24 THE COURT: Any others? Any other exhibits you want
25 to offer now?

1 MR. GOLDBERG: Sure. 1321 is a final judgment on
2 UBS municipal bond rigging. We would ask the Court to take
3 judicial notice of that judgment pursuant to 90 -- to the
4 Rules of Evidence 902.

5 1324 is a public report by the U.S. Senate. It's
6 not an expert report. It's a public report, published --
7 public report by the U.S. Senate subcommittee on Wall Street
8 and the financial crisis. You know, it's admissible as a
9 public report under the hearsay exceptions, and your Honor
10 has already declared that -- ruled that the issue of the
11 subprime lending crisis and its impact on the city is at
12 least arguably relevant in this case.

13 1325, again, is a Detroit Retirement Fund lawsuit
14 against UBS. We, again, would ask the Court to take judicial
15 notice that it fits under the judicial notice requirements of
16 902.

17 1326 is, again, a public report by the City of
18 Detroit Planning & Development Department, Neighborhood
19 Stabilization, on the impact on the housing crisis in
20 Detroit. They objected on the basis of relevance and
21 completeness. We have attached the complete report to the --
22 to our exhibits and have provided the complete report to the
23 city prior to this proceeding, not just today, I mean when
24 the exhibits were provided, and we believe that it's clearly
25 a public report under the hearsay exceptions under 803.

1 And the Sean Werdlow biography, again, it's for
2 basically background information, but, you know, we can
3 withdraw that. There's been testimony as to that issue.
4 Those are the exhibits that I request, all the newspaper
5 articles. I would also say that newspaper articles are self-
6 authenticating under FRE 901.

7 MR. HERTZBERG: As to the exhibits -- excuse me --
8 that he's moved into -- or asked the Court to move into
9 evidence, we object on hearsay as to the newspaper articles
10 and on relevancy basis. As to Number 26, which is the
11 Planning & Development Department, Neighborhood Stabilization
12 Program, we object on relevancy grounds. On 1324, which is
13 the "Wall Street and Financial Crisis: The Anatomy of a
14 Financial Collapse," we object on hearsay and relevancy
15 grounds also, your Honor. And going back to the newspaper
16 articles, I'm confused at exactly what Mr. Goldberg was
17 saying when he said that this is for use at future litigation
18 possibly, the articles. I didn't fully understand what he
19 was saying, but they're hearsay, they're not relevant to this
20 proceeding, and they have no evidentiary value for this
21 Court.

22 THE COURT: How about the two court papers, which I
23 think were 1321 and 1325?

24 MR. HERTZBERG: Our objections to those are based
25 upon relevance, your Honor. They're not relevant to the

1 assumption motion and whether it should be approved or not
2 under 9019.

3 THE COURT: One second. All right. The Court will
4 overrule the objections as to 1321, 1324, 1325, and 1326 and
5 conclude that their relevance is arguable, and because in the
6 case of 1324 it is a public document, the hearsay objection
7 is overruled.

8 (Sole Exhibits 1321, 1324, 1325, and 1326 received at
9 3:18 p.m.)

10 THE COURT: Did you want to address the newspaper
11 articles further in response to Mr. Hertzberg's argument?

12 MR. GOLDBERG: I just wanted to clarify that I was
13 not suggesting they're for use in future litigation. I was
14 simply trying to express what I believe was what the Court
15 declared in its pretrial order where it essentially said that
16 this proceeding is not the trial on the substance of these
17 issues. It's a trial to determine whether a sufficient basis
18 can be laid to move forward on these issues later in the
19 bankruptcy, and it's for that reason that I feel they
20 contribute to the Court's ability to make that kind of a
21 judgment because they are essentially background issues --
22 background articles on the issues that we've been speaking on
23 in here whether it's LIBOR fraud, whether it's SEC
24 intervention, whether it's municipal bond rigging, all these
25 kind of issues that actually Mr. Orr talked about were being

1 considered in the city's litigation, and that's the reason,
2 so they're not being offered for the truth of the matter. I
3 didn't want to make clear that's future litigation -- I'm
4 talking about that they're relevant to the particular
5 proceeding that we are in right now in order to help the
6 Court make a proper ruling on whether there's enough to have
7 these issues move forward. Thank you.

8 MR. HERTZBERG: Your Honor, one last thing. One,
9 articles of this nature are purely propaganda, and, second, I
10 don't believe the Court needs help through the use of
11 newspaper articles in making its decision on whether to
12 approve this assumption motion. They're hearsay and
13 shouldn't be admitted.

14 THE COURT: The Court will sustain the city's
15 objections to 1307, 1317, and 1318 on the grounds of hearsay.
16 Anything further before closing arguments?

17 MR. SHUMAKER: Your Honor, before closing, with your
18 indulgence, the city has asked counsel for Barclays to
19 address the Court regarding the terms of the -- of Barclays'
20 commitment letter very briefly.

21 THE COURT: Okay.

22 MR. LEVIN: Good afternoon, your Honor. Richard
23 Levin, Cravath, Swaine & Moore, appearing for Barclays
24 Capital, Inc., the lender in the proposed transaction. Your
25 Honor, I'd like to address what Mr. Shumaker said, but I want

1 to make a preliminary point first, if I may. There was a
2 colloquy between Mr. Goldberg and Mr. Orr about the terms of
3 the loan. I'd like to be clear that Barclays will be bound
4 by the documents, not by what happens in a colloquy in the
5 courtroom, and we're not -- I didn't necessarily agree with
6 all of the colloquy. I don't think they're consistent with
7 the documents.

8 Turning to the amendment based on the events of the
9 last few weeks, Barclays is giving two things and asking the
10 city to give two things, and we have an oral agreement that
11 is currently being documented. We expect to have it
12 documented by the beginning of the week. Barclays is
13 extending its commitment date from January 7, 2014, to
14 January 31, 2014, and is clarifying that in the fee letter
15 the definition of successful syndication was syndicating at
16 least \$175 million of the loan, which was half of the
17 original 350. That is going to be changed to 50 percent of
18 the actual loan amount, so it drops it significantly under
19 the circumstances. The city is agreeing not to borrow more
20 than 285 million, and the city is agreeing that if the swap
21 termination payment is less than 165 million, the swap
22 termination loan will be reduced dollar for dollar so that
23 there will be 120 million on the quality of life loan and
24 then whatever is necessary to pay the swap termination fee up
25 to 165 million.

1 THE COURT: Thank you, sir.

2 MR. LEVIN: Thank you, your Honor.

3 THE COURT: So do we want to proceed with closing
4 argument now or begin Monday morning?

5 MS. BALL: Your Honor, I'm reminded that in opening
6 we were advised by Mr. Hackney that the objectors deserve
7 three and three quarter hours for their closing, and at that
8 time we asked to reserve our right to respond to their
9 closing given the length of it. If that accords the Court,
10 that's what we would like to do.

11 THE COURT: Okay.

12 MS. BALL: It would be most helpful.

13 THE COURT: That's fine. All right. So let's start
14 with the objectors' closing argument on Monday morning, and I
15 probably gave you this already, but let me give it to you
16 again. I'm showing 207 minutes left for the objecting
17 parties and 143 for the city.

18 MS. BALL: Thank you, your Honor. Are we agreed
19 that the record of evidence is closed as we proceed?

20 THE COURT: Yes.

21 MR. MARRIOTT: Your Honor, can I ask for a
22 clarification here? It's not typical that the party with the
23 burden goes second. Normally, the party with the burden goes
24 first. It seems as though the city, if I understood what Ms.
25 Ball just said, is looking to reverse and have the objectors

1 go first. I think we're entitled to have the city go first,
2 hear their arguments, and address them in response.

3 THE COURT: Are you concerned that they will make an
4 argument that you are not already aware of?

5 MR. MARRIOTT: Well, Judge, there's been an awful
6 lot of evidence that has come in, and there are various ways
7 to present that evidence as part of argument. And we may be
8 in a position, depending upon how they present certain
9 evidence as part of their argument, to rebut it in our
10 argument, and I think it's their burden to go forward, and
11 it's our ability to hear their arguments, make our own, and
12 rebut theirs if necessary.

13 MS. BALL: Your Honor, Corinne Ball for the record,
14 Jones Day, for the city. I think that the standard is -- I
15 disagree and would dissent from Mr. Marriott's description.
16 We have a motion, we have an objection, and we have a reply,
17 so if your Honor would prefer, we believe we have the right
18 to ultimately reply. That is the process. It certainly is
19 the process of this Court and the rules for submission of
20 papers. If, however, your Honor is concerned, we could
21 commence closing and then reserve a significant portion of
22 our time to respond to what they may say, which, your Honor,
23 I believe is our right as the movant to have the final reply.

24 THE COURT: Well, in the absence of agreement, I
25 think we should follow the ordinary trial process and have

1 closing argument with the moving party first, so that would
2 be on the city first, but, like I say, it doesn't matter to
3 me if we do that now or begin first thing Monday morning.

4 MS. BALL: May I have a moment, your Honor? If I
5 may, your Honor, I'd like to set out some parameters, but I
6 would also ask the Court if we might reserve some of our time
7 to reply --

8 THE COURT: Yes, absolutely.

9 MS. BALL: -- as, in fact, that's why we all had our
10 minutes allocated and tracked.

11 THE COURT: That's the normal process, so that's
12 what we're going to follow.

13 MS. BALL: Thank you, your Honor.

14 CLOSING ARGUMENT

15 MS. BALL: First of all, I'd like thank your Honor.
16 It has been a lengthy process, and your Honor has played
17 quite a role in reaching what the city regards as a better
18 agreement and a good outcome. Your Honor, we have before you
19 what is a settlement essentially allowing a secured claim
20 together with a motion to borrow monies to fund the payment
21 of that settled claim and enable the city to move forward
22 with its plans to restore the viability of the City of
23 Detroit.

24 Your Honor, I'm reminded about your statements to
25 us, and I want to set them out for you at the outset. It is

1 true and you have recognized that any 9019 presents an issue
2 that can be extremely awkward. Should your Honor not approve
3 it, we would have to litigate it, and we would have to be
4 able to preserve our right to do so, but what should be
5 abundantly clear from these hearings that in this situation
6 that awkwardness is multiplied by a factor of a billion four
7 plus because, your Honor, one of the things the settlement,
8 should you approve it, preserves is the right of the city and
9 interested parties to continue to examine the validity of the
10 COPs and whether or not their claim should be allowed. All
11 the settlement still preserves those rights, and that is
12 significant in terms of some burden on us in terms of the
13 awkwardness. As your Honor observed earlier today, if you
14 look at the objectors around the table, should you fail to
15 approve or should you determine not to approve the
16 settlement, the defenders on that litigation are by and large
17 at the objector table. FGIC, as the insurer, I'm sure would
18 be on the defense, Syncora, the counterparties. Your Honor,
19 we've already been told since we have indicated that were
20 there to be litigation it makes sense if the settlement is
21 not approved, and your Honor has heard about the voidability,
22 to litigate the COPs and the swaps. There is a core of
23 common facts that tie those transactions together, and as
24 your Honor has heard, the claims go to the same controlling
25 law, Act 34 and the structure of the transaction. So, your

1 Honor, the defendants would likely also include the COPs
2 objectors, who have indicated they would involve the pension
3 systems. So, your Honor, everyone here with the exception of
4 Mr. Goldberg and with the exception of Ms. English's client,
5 does have a real interest in these claims and how they are
6 perceived to go forward.

7 But what I thought was most concerning, your Honor,
8 is that we understand or help -- we should help you
9 understand what is the burden that we movants have to meet.
10 I think we've gone over the Bard factors most recently
11 reaffirmed in Footnote 6 in the Greektown case, Greektown
12 Casino case, this summer, but let's not forget what we also
13 learned in MQVP at the Sixth Circuit, which is that the Court
14 need not make a precise determination of the outcome since an
15 exact judicial determination would defeat the whole purpose
16 of compromising the claim. Similarly, your Honor, we learned
17 in -- really through Judge Spector's opinions in Dow Corning
18 we know two things -- three things actually. The Court need
19 only reach a conclusion that the proposed settlement
20 represents even the lowest point in the range of
21 reasonableness more recently cited in In re. Fodale in
22 February of this past year. The second thing we know is that
23 the law favors compromise, and the third thing that we know,
24 which was actually established in Drexel in New York but
25 relied upon heavily by Judge Spector in Dow Corning, was that

1 a court may approve a settlement even if it believes that the
2 trustee or debtor in possession would ultimately be
3 successful at trial. Your Honor, that is the burden that we
4 faced. It was not to put on a mini trial but to provide your
5 Honor with a sense of the claims that were examined, the
6 facts relating to those claims, both good and bad, and the
7 strengths and weaknesses of those claims.

8 Your Honor, in this case, we have two kind of
9 competing issues, which seem to come to rest on the second of
10 the Bard factors. Your Honor, by that I mean we not only
11 have the probability of success on the merits. We also have
12 the continuing concern about the viability of the city, the
13 need to get on with it, not having time and not being in a
14 position of asking the residents to wait while we litigate
15 and during the term of that litigation are unable to enter
16 the capital markets and start restoring the viability of the
17 city. Your Honor, in some respects, it's kind of
18 collectability or the second Bard factor in reverse, and I
19 think it's very important, but what I had also wanted to
20 point out to your Honor, the objectors' argument is -- and we
21 agree with them largely -- that these claims are largely
22 documentary. We agree with them, but, your Honor, they
23 cannot turn and say these claims are largely documentary, but
24 there is no evidence except for Mr. Orr. That clearly is
25 erroneous. The documents -- and I am prepared to go through

1 them on a level that would demonstrate to your Honor the
2 strengths and weaknesses to which Mr. Orr referred -- are
3 also very amply supported by the evidence before you.

4 And what do I have on the other hand, your Honor,
5 before I do that? Let's see. We have lawyers who are
6 speculating that there was no threat to the city, that there
7 was no threat to the casino revenues, so why do the
8 settlement, yet, on the other hand, in answer to that
9 speculation, we have the testimony of Mr. Orr that he
10 considered doing nothing, and he determined, due to the cost
11 of this piece of paper and the constant threat of default,
12 that that was not a sustainable course of action for the
13 city; that they had to initiate a new approach.

14 We also, your Honor, have evidence regarding,
15 although they may choose to ignore it, what would the city
16 look like had it chose to litigate? In fact, Mr. Malhotra
17 talked about a litigation forecast. He didn't call it that.
18 Your Honor, he called it the no trapping, no DIP scenario or
19 scenario two in his three scenarios. Your Honor may recall
20 that even on that scenario, which would be the equivalent of
21 obtaining an injunction to maintain the status quo during the
22 pendency of a litigation, we were in below Mr. Orr's hard
23 deck of 50 million by the second week of February, and we
24 were again in critical cash condition before long. It is
25 true -- it is absolutely true because the city is dedicated

1 to getting on to help the residents of Detroit that those
2 forecasts did include starting the reinvestment during that
3 time period, but, your Honor, the reinvestments during that
4 time period were not substantial. My understanding of the
5 evidence before you, your Honor, they were layered in over
6 fiscal year 2014 and were roughly 60 million, so we do know
7 what the city would look like with litigation. We did look,
8 and we did present that evidence to the Court as opposed to
9 not looking at it.

10 Your Honor, there is absolutely no witness and no
11 evidence that litigation was compatible with the post-
12 petition financing. What do we have instead? Instead we
13 have the testimony of Mr. Buckfire and Mr. Doak and Mr. Orr
14 that unsecured credit was not available; that the casino
15 revenues were a critical collateral item for going forward
16 with any financing, among others, the letter of JPMorgan,
17 Exhibit 61, your Honor, that they were critical if we were
18 going to get financing, so I think we did put on evidence
19 that litigation was not compatible with a post-petition
20 financing; that, in fact, stability of the city was not
21 achievable if 20 percent of its revenues -- and I think both
22 Mr. Orr and Mr. Malhotra established that casino revenues are
23 the most stable and the largest single component of the city
24 revenues -- would be necessary as collateral. So, your
25 Honor, so far nothing but speculation. We have no witness

1 and no evidence from the objectors that any expert or other
2 party would have advised the city in light of all this not to
3 do this deal. In fact, we have contrary evidence. We have
4 many contrary statements regarding the need to move forward,
5 regarding the significance, if you will, your Honor, of
6 restoring stability to the city so that it could be in a
7 position to move forward and to propose a plan of adjustment.

8 Your Honor, we would think we should just stop for a
9 moment. We do not debate that there are clearly litigable
10 claims involved in settling this secured claim. We have
11 acted carefully to actually preserve some of them for going
12 forward so that other intercreditor issues can be fully
13 explored as we move forward in this Chapter 9. Our
14 recognition of the strength of these claims has been
15 reaffirmed by each of the first, second, third, fourth, and
16 fifth amendments to the FOTA's, which are Exhibits -- City
17 Exhibits 50 to 54, in which we at every turn preserve the
18 right of the city to go forth and litigate if the benefits
19 weren't going to be realized and have the opportunity to talk
20 to our creditors and to constantly reevaluate this. In fact,
21 your Honor, those amendments took us through September 23rd,
22 which is a date you may recall. On that date, your Honor, we
23 adjourned to a date to be determined, and with that, your
24 Honor, we acquired another -- I would call it walk right
25 because we had failed to obtain approval of the FOTA within

1 75 days. So we were constantly aware and constantly
2 reevaluating and pursuing these situations because, as Ms.
3 Green pointed out, June was a very difficult time for the
4 city. It was. I don't think it has terrifically improved.
5 I think the financing and getting this casino revenue
6 question behind us is probably groundbreaking insofar as it
7 enables the city to move forward with what it has to do, and
8 to put what has clearly been a nonadvantageous deal behind it
9 would be a good thing, but perhaps we should take some time.
10 What have the objectors pointed out? Well, on cash they keep
11 pointing out what was June, what was June, what was June, but
12 as I said, your Honor, the evidence in the record established
13 that we continued looking at this throughout and that, in
14 fact, again, the last look at your Honor's insistence earlier
15 this month.

16 They also pointed, your Honor -- and I think it was
17 also Ms. Green -- that in June cash was very low, but, gee,
18 now cash is upwards of roughly a hundred million at the end
19 of October. And I think, your Honor, it's hovered about that
20 level. How did it get there? As your Honor is well aware,
21 11 million a month was from casino revenues. The banks, in
22 fact, did forbear. On the do nothing scenario, which
23 Mr. Orr, the emergency manager, in the city's interest
24 thought was terrifically short-sighted if he was going to
25 move the city forward, we got them to forbear. We did get

1 the casino revenues. We had your Honor's assistance because
2 we clearly had people who would have appreciated a different
3 outcome on the casino revenues, some of whom are here
4 objecting, so, your Honor, we do have some cash, but even so,
5 what do we know from Mr. Malhotra in Exhibits 108 through
6 111? We know that the city's cash, even taking that into
7 account, remains tight without the post-petition financing
8 and remains stressed as long as it's paying interest on an
9 obligation that's measured by 800 million with no
10 countervailing benefit. After 2009, what has the evidence
11 established through documents? It's established that the
12 hedge had zero benefit to the city by virtue of the optional
13 termination which would have enabled the counterparties to
14 terminate the hedge and walk, and the city would never have
15 gotten an asset from this, so it's clearly a one-way street
16 where we were paying 50 million a year where alone for a
17 fraction of that amount, certainly even when we were
18 measuring it at 230, was 17 million a year, and obviously now
19 with the intervention of your Honor in mediation would be
20 even less at 165, but perhaps we should turn to Ambac and
21 their objection. Ambac, as the lead invalidity objector,
22 would have the Court see invalidating the swap under Act 34
23 as a certain and swift outcome in litigation yet even Ambac
24 admits that the key steps to the Act 34 claims -- and they go
25 to both the COPs and the swaps -- focus on the future of the

1 service contract, and they focus on the legitimacy of the
2 service corps themselves. That seems to me, your Honor, that
3 may not be a judgment on the verdict, and one would
4 inevitably think that we have to look to the contracts, which
5 are also in evidence before you today.

6 Mr. Orr this morning alluded to some of the key
7 evidence. He told your Honor there were facts suggesting
8 that a claim to invalidate the COPs and swaps because of a
9 failure to comply with Act 34 might succeed were premised on
10 the operation of the service corporation, no meetings, no
11 employees. In fact, the service corps' address, according to
12 the service contracts, which are in evidence, Exhibits 128
13 and 129, are care of a law firm, Lewis & Munday. We also
14 have the service contract terms which are in evidence as
15 Exhibits 128 and 129. It is true that the only service
16 mentioned in the service contract, your Honor, is that the
17 service corp shall fund payments to enable debt service --
18 don't use the word "debt" -- to enable payments required on
19 the certificates of participation. It also has a very
20 bizarre provision that upon the city bankruptcy, there's an
21 acceleration clause for -- measures the liquidated damages as
22 all amounts due under the COPs, so clearly the strength of
23 the claim -- the evidence of strengths of those claims are
24 before you. However, there are other facts, and one of which
25 I have to thank Ms. English for putting into evidence just

1 earlier. Your Honor heard about the city ordinance. You've
2 heard -- you haven't heard -- and that is in the service
3 contract -- that the amounts payable are subject to annual
4 appropriation. You saw Ms. Green's reappropriating the
5 appropriations. Hence, debt limits don't apply, and the
6 service corporations aren't subject to swap limitations or so
7 the structure says, and the offering circular introduced by
8 Ms. English has 12-point huge type in it that this is not
9 debt of the city. There is no full faith and credit. This
10 is merely a service contract, and that's in the offering
11 circular which just got admitted. There are provisions in
12 the service contract which say it's not indebtedness of the
13 city, it's not a general obligation. The sole remedies of
14 the trust which issued the certificates of participation are
15 to sue on a contract and then seek mandamus for an
16 appropriation, so we have a lot of difficult facts to
17 overcome. And it's interesting that we have differing views
18 on estoppel. Maybe, maybe not. So, your Honor, I think
19 you've seen -- you've had a fair amount of evidence on the
20 validity, the void point, and I guess we saw our first cases
21 from the objectors on void ab initio two days ago, and none
22 of them -- none of them dealt with the derivative, and none
23 of them dealt with this type of situation with a certificates
24 of participation issued by a trust. It's not as if there
25 were a clear path there that this has been done before, this

1 could be done in short order.

2 Fraud, your Honor. You've heard what it would take.
3 I think that no one would stand here and tell your Honor that
4 any fraud lawsuit of this magnitude could be commenced and
5 concluded within a matter of weeks. Certainly that would
6 take a fair bit of time, so I think, your Honor, that
7 evidence has been before you both through Mr. Orr and from
8 Mr. Goldberg's submissions, that it would take a fair bit.
9 UBS clearly had multiple roles here. The former CFO of the
10 city did join SBS, the predecessor in interest to Bank of
11 America, but, on the other hand, your Honor, the city did
12 raise a billion four on this structure, and the city did --
13 forgive me, but there's no debate that the city at the time
14 thought it had saved the city's pensions and restored their
15 financial viability, so clearly there were benefits, and
16 clearly those benefits would be taken into account.

17 I also am struck by how easily the objectors would
18 have your Honor disregard the trend in bankruptcy on a number
19 of fronts. Your Honor, I think that I'm referring -- if we
20 went to the special revenue argument, Mr. Orr has testified.
21 Documents were also clear. The briefs are also clear that
22 when the Gaming Control Act was enacted in the mid- to late
23 '90s, they defined gaming revenues as an excise tax. That
24 action was totally independent of what happened in 2009.
25 Section 901(2), 902(2)(E), expressly includes excise taxes as

1 a form of special revenue. What's interesting here is that
2 we heard about the legislative history that was, frankly, the
3 subject of Judge Bennett's opinion in one of the Jefferson
4 County decisions, and what he was really focused on in that
5 decision, your Honor, is what was the extent of the term
6 operating and maintenance expenses, so he did focus on the
7 legislative history that dealt with project debt and what the
8 meaning of operational expenses were, but what no one has
9 brought to your attention, as far as I know, is the
10 legislative history surrounding the evolution of the
11 definition of special revenues in Chapter 9. In 1988 when
12 Chapter 9 was amended on the special revenues point -- thank
13 you to our sister city, Cleveland, among others, who were in
14 very desperate difficulties at the time -- the legislative
15 history in the Senate report were crystal clear that an
16 excise tax includes a tax on a particular activity such as a
17 motel -- use of a motel or hotel room, sale of alcoholic
18 beverages, and, your Honor, I think it's pretty clear from
19 Collier's at least, in looking at that legislative history,
20 has determined that gaming revenues are certainly likely
21 there, and both the Senate and the House share that same
22 provision. What is funny is that the vulnerability -- those
23 would be the good facts, your Honor, on the special revenues.
24 It was argued somewhat by my colleagues from Syncora this
25 past summer. Now, what do we have in the good facts? City

1 code calls them excise taxes. We have the plain meaning.
2 The legislative history clearly indicates gaming revenues
3 should be within there. But your Honor also has the bad
4 facts. They're documentary as well as testamentary. The
5 collateral agreement, City's Exhibit 11. Think about it,
6 your Honor, and I think that's the vulnerability. It doesn't
7 operate where the special revenues directly pay the debt, and
8 928 doesn't say that has to happen, but, no, that was one of
9 the bad facts, and clearly that's in front of you, and we did
10 think about it, but at the end of the day overcoming the
11 simple plain meaning and a very clear legislative history
12 that gaming revenues should be available, it seems to us
13 gave -- put some hurdles between ourselves and setting aside
14 these liens.

15 When it came to the Gaming Act alone, your Honor, we
16 are overcoming a fair bit of evidence also in front of you in
17 terms of the city ordinances, in terms of the opinion of
18 corporation counsel, the opinion of Lewis & Munday. What do
19 we have contrary to that evidence, which, in fact, the city
20 had to look at because it was dealing with throughout this
21 whole period what happens to 20 percent of its revenues and
22 how long would it take them to litigate it? We have a
23 lawsuit that says pledges of gaming taxes are only allowed
24 for its roughly five to six purposes. They can be used for
25 these permitted purposes, one of which, your Honor, is

1 program design to enhance quality of life and otherwise
2 relieve the citizens of a tax burden. Well, we have
3 everybody finding that paying the pensions for the public
4 service employees of City of Detroit was a program, was part
5 of a program to enhance quality of life. Is it black and
6 white on either side? No. We don't think so. We thought it
7 was litigable. Were there good facts? Yes. Were there bad
8 facts? Yes. I think we presented both of those to your
9 Honor both as a matter of documents, the opinion of Lewis &
10 Munday. All the elements are of it are in City Exhibit 133,
11 Schedule A. The opinion of the corporation counsel is in the
12 same place. The ordinances giving a statutory lien totally
13 contrary -- totally contrary to what I viewed as an
14 intermeddler e-mail from someone who was not there and did
15 not talk to anyone. The counterparties did have a statutory
16 lien, and they did have the opinion of Orrick, and it speaks
17 for itself. And that's in front of you as opposed to the
18 commentary from a former investment banker advisor of the
19 city.

20 Finally, your Honor, at least on the big point,
21 which we view the big point as the void or voidability point,
22 it's interesting that on this structure that hasn't been used
23 before, on a source of revenues that haven't been
24 collateralized before or attacked, that we could so readily
25 dismiss void or voidable. Let's talk about what that means,

1 and what does that mean in the context of dealing with what,
2 your Honor, are very protected financial contracts in
3 bankruptcy. We have three circuit decisions within the past
4 24 months that suggest the issue of void versus voidable is
5 not entirely clear. Moreover, we do have the Eighth Circuit
6 telling us unjust enrichment clearly voidable, clearly can't
7 go near a swap with that. Somehow the objectors are telling
8 us that we should rely on one Bankruptcy Court opinion from
9 out of district that has been called into question by the
10 same circuit in which that Bankruptcy Court sits and by two
11 other circuits. Your Honor, can't say it's not litigable,
12 but the concept that it would be a slam dunk in the face of
13 very well-healed adversaries seems to us a bit of an
14 overstatement. In fact, your Honor heard about the
15 strategies that the city considered to act outside of Chapter
16 9 to sue in the early days when bankruptcy was not upon us.
17 The safe harbors were one of those reasons.

18 Your Honor, to rely on Judge Gonzalez, who I have
19 the utmost respect for, in one of his earliest opinions in
20 Enron when he said the facts surrounding a transaction are
21 critical, and we need to look at them to see if it really is
22 a financial transaction -- in that case, it was a dividend
23 under Oregon law. He would later try the same thing when
24 holders of commercial paper would seek and pressured and
25 duressed and put a gun to the head of Enron saying redeem our

1 commercial paper because we're hearing all kinds of rumors
2 that Enron is going to fail, and Judge Gonzalez looked at it
3 and said, you know, this isn't an ordinary financial
4 situation. This is gun to the head. This is terrible. And
5 he, in fact, said that they were not protected, and, in fact,
6 the estate should go forth and sue these banks that got paid
7 on their commercial paper, actually redeemed it very, very
8 early.

9 The Second Circuit resoundingly reversed Judge
10 Gonzalez and has taken the point of view which has since been
11 reflected by both the Eighth Circuits and Judge Easterbrook
12 in the Seventh that this is an area that requires almost
13 preemption. I would say the Second Circuit's decision is
14 more on the preemption side of it, and, your Honor, by way of
15 background, that would be -- I will find you the cite, your
16 Honor, the Enron Second Circuit opinion. The Eighth Circuit
17 was in Commercial Industries, which we have cited in our
18 papers, and the Seventh Circuit was Lancelot Industries where
19 Easterbrook affirmed. Again, putting state law labels does
20 not automatically get you around suing to set aside a
21 transaction, but, your Honor, litigable. We don't disagree.
22 We thought it was litigable. We also thought that we had
23 already experienced -- and, fortunately, with your Honor's
24 assistance, we're able to overcome what happens when your
25 casino revenues are trapped because sure enough it happened

1 when someone got instructions, and that boiled down for us to
2 how would our swap counterparties be entitled to do that in
3 this situation? Are they within the exception to the
4 automatic stay of 362(b)(17), which applies to two categories
5 of claimants? It applies to swap participants and financial
6 participants. Your Honor, there's no doubt in my mind the
7 swap counterparties are financial participants. Also, your
8 Honor, there's no doubt, at least for purposes of a swap
9 definition for bankruptcy only, that any agreement
10 providing -- and that's in 101.53(b)(6) -- anyone providing
11 credit support or enhancement for a swap, that credit
12 enhancement is considered a swap agreement. In fact, the
13 definition says a swap agreement includes the following, and
14 it gives you a litany, and it includes any credit agreement.
15 So the city's obligations under the collateral agreement as a
16 credit support do make the counterparties at least arguably a
17 swap participant with the city, so I think we do have -- we
18 did have a risk under 362(b)(17). We countered that. We
19 went and said, well, what would it look like if we could get
20 an injunction to maintain the status quo and keep getting
21 those revenues? Your Honor, there was no answer there
22 because we couldn't get a financing or at least we found no
23 ability to get the financing in the face of that.

24 Moreover, your Honor, what if someone were to ask
25 you to issue that injunction or enjoin? Your Honor, we

1 thought about the roadblocks that have been erected against
2 Bankruptcy Courts dealing with certain kinds of contracts
3 and, in particular, 362(o) and 560. 362(o) basically says
4 that Bankruptcy Courts cannot issue a stay against swap
5 participants if they're doing critical actions. Your Honor,
6 I'm going to be very careful here because if this isn't
7 approved, you know we will have an answer to this one as
8 well, but it is a roadblock as is 560, which says as long as
9 swap participants are liquidating, terminating, or
10 accelerating by reason of a bankruptcy filing, there are very
11 strong limitations in what the Bankruptcy Court or the
12 Bankruptcy Code can do. Is it a closed door? No.
13 Litigable. But, your Honor, I think we've put evidence
14 before you regarding that statute, regarding the operation of
15 the collateral agreement, regarding the history in this case
16 with Syncora. What would it mean? Your Honor kind of meant
17 the following. If we were to decide to litigate, I'm going
18 to ask your Honor, I think, about one other characteristic
19 here, what the bank's choice is going to be. And to this,
20 your Honor, I'm turning to the insurers. Had the city
21 decided to litigate, the insurers could simply for the life
22 of their swap, much like the COP holders for the life of the
23 COPs, continue to try to collect payments from Syncora and
24 FGIC, all interesting for the swap counterparties, and we all
25 know FGIC, despite its plan, which by the way, your Honor,

1 we're not conceding those orders were enforceable on the
2 city, still would have given the bank some recovery, some
3 recovery which they have given us estimates of, which not
4 surprisingly are in the 60- to 65-percent range, but, your
5 Honor, what would we have? We'd be fighting, so it's not
6 whether or not the banks are going to terminate. We would be
7 fighting with Syncora and with FGIC because under their
8 insurance policies, they would have to defend. And, your
9 Honor, as I said, if we went into the validity issues, we
10 would likely add all the COPs holders, and I'm sure they
11 would add the pensions, so, your Honor, the incentive to
12 settle and the prospects for litigation for the city were
13 evaluated and extremely so, and I think, your Honor, the
14 documents -- most of the good facts and bad facts are in the
15 governing ordinances and the documents that have been put in
16 evidence before you and, as you've heard from Mr. Orr, were
17 very much a part of his thinking in approaching and going
18 forward with the settlement. All this, your Honor, against
19 the backdrop of what is our burden. In the Sixth Circuit,
20 lowest range of reasonableness, your Honor. And did we
21 apprise you of what the claims were, good facts, bad facts,
22 and that a judgment was made? Your Honor, that is not the
23 burden of a trial. It's not the burden of a mini trial.
24 Bard tells us that. Greektown tells us that. I don't think
25 there's any doubt, your Honor, that this would be a complex

1 and expensive litigation. I think you've heard about it. I
2 think I have shared with you, your Honor, as did the review
3 of the claims and the documents that it would involve many of
4 the constituents in this case if there were to be such a
5 litigation, and it would do it under a circumstance where the
6 city's cash lifeline was in question and under threat. If
7 this settlement is to be approved -- and we urge the Court to
8 approve it -- that lawsuit, at least as far as it goes to the
9 COPs, remains extant, and many of these issues can still be
10 reconsidered. We do not mean in proposing the settlement,
11 your Honor, to in any way denigrate the importance of
12 intercreditor issues. We understand them, and we understand
13 that creditors have different agendas. We are, however,
14 dedicated to keeping moving forward and deferring to
15 intercreditor issues when they don't defer -- when they don't
16 threaten the stability and viability of the city in terms of
17 its working capital and its finances. And I think this
18 settlement, your Honor, demonstrates that differing decision
19 matrix.

20 As to the post-petition financing, your Honor, I
21 think that we have met our burden. Clearly we have
22 established through the testimony of Messrs. Doak and
23 Buckfire that unsecured credit was not available, which was
24 corroborated by their very early market tests. Your Honor
25 may recall Exhibit 61, the letter from JPMorgan. In fact,

1 the letter from JPMorgan said the keys to any DIP financing
2 and to the city's ongoing access to capital will be the
3 strength of the security interest in certain of the city's
4 general fund revenues, and it goes on to list specifically
5 the casino revenues. I think that the evidence has shown
6 that the city followed a robust competitive process
7 contacting over 50 people. The city solicited 50 traditional
8 alternative sources of financing, received 16 lending
9 proposals, and ultimately negotiated commitment proposals
10 with four parties. Your Honor, the detail of that is set
11 forth in the city's Exhibits 88 and 89, and you've heard
12 testimony from both Mr. Doak and Mr. Buckfire from Miller
13 Buckfire as well as Mr. Orr. They also testified that on an
14 all-in cost basis, the Barclays proposal was the most
15 advantageous available to the city. You've heard evidence on
16 that point from Mr. Buckfire, you've heard evidence on that
17 point from Mr. Doak and again today from Mr. Orr, and that
18 that remains true even if the market flex is fully executed
19 that it is the best available financing.

20 I think the evidence has also shown this morning and
21 through the testimony of Mr. Doak that the city complied with
22 Public Act 436 and the Home Rule City Act. Both were clearly
23 involved. PA 436 required the emergency manager to submit
24 the financing proposal to the City Council. The emergency
25 manager did that. Not only did he do that, he directed his

1 investment bankers to meet with each individual member of the
2 City Council and give them an opportunity to review the
3 situation and ask questions, and City Exhibit 90, your Honor,
4 clearly shows that the briefing materials did include an all-
5 in cost model and that, in fact, the testimony of Mr. Doak
6 would show that the range used in those materials did include
7 the market flex and that even if it was fully flexed, the
8 resulting range would be well within the materials shared
9 with the council members. I think that was in Exhibit 90 and
10 in Mr. Doak's testimony.

11 Separately from that, the proposal was officially
12 transmitted to the City Council. As your Honor knows, they
13 considered briefly an alternative financing and declined the
14 city's proposed financing but never proposed an alterative.
15 Your Honor, I think that satisfied Mr. Orr's burden under
16 436. He then had to deal with the Home Rule City Act, and in
17 that connection, as your Honor noted back on December 18th,
18 there was an Emergency Loan Board hearing on December 20th,
19 and on that day, as is clear from City Exhibit 141, the
20 Emergency Loan Board did approve of the city's financing
21 proposal, and your Honor was also very correct that Treasurer
22 Clinton is the chair of that body, and, in fact, his
23 designee, Tom Saxton, is one of the signatories on that
24 order. So with that I think, your Honor, that we have
25 clearly met our burden on the financing. We are happy to

1 answer any additional questions, but we think we have met the
2 requirements for granting a lien and to enable your Honor to
3 enter the findings regarding the city's good faith.

4 Your Honor, the one point that I would like to make
5 before reserving the remainder of my time to respond is that
6 we've heard a lot of questions today about what documents
7 said and what did you understand them to mean. I think, your
8 Honor, when it comes to the forbearance agreement, it speaks
9 for itself. It is not an amendment or a waiver. It does not
10 modify the swaps. It, in essence, is an agreement strongly
11 supported by New York law to forbear, and the banks have, in
12 fact, been forbearing. Your Honor, it's an agreement that
13 changed radically in 2009. It changed radically in 2009 when
14 the four swap agreements were amended. You may ask why are
15 there four. Well, remember, there are two service corps, two
16 swap providers. Two times two is four, so that when Syncora
17 and FGIC consented to the 2009 deal -- and that consent with
18 its exhibits is also in evidence before you -- they consented
19 not once, but, your Honor, they consented four times, and
20 that amendment added what has been called the optional
21 termination provision. And I think, your Honor, that changed
22 the nature of these transactions, and it is that optional
23 termination -- it is not Section 6 -- which the forbearance
24 agreement operates on, and perhaps it would be helpful -- I
25 know your Honor has already gotten the architecture of the

1 service corps and gotten the architecture of the collateral
2 agreement and the trapping of revenues, but maybe just a
3 minute on the architecture of the swap would be helpful.
4 Swaps usually have three components. They have the ISDA
5 master agreement which everyone uses. They then have a
6 schedule, which takes things in or out or adds things to the
7 ISDA master schedule, which actually tailor the deal to what
8 the two counterparties want to do. And then, thirdly, they
9 have a confirmation.

10 In this circumstance, the insurer provisions are all
11 in the amended schedules as is the optional termination. The
12 general termination right is Section 6 of the ISDA master,
13 which then keys into these schedules. What the forbearance
14 agreement is doing, although it is clear at least to us --
15 we're in default, we can't pay -- that should the banks want
16 to declare a termination event under Section 6, they probably
17 could have absent the forbearance agreement, but they didn't.
18 They are forbearing, and, your Honor, they're going to a
19 provision in the amended schedules which says that they can
20 terminate at any time, but they can't get paid anything from
21 the service corps. That's what it says.

22 By way of understanding contrasts in the insurer
23 role, we turn to the confirmation in the same swaps, the
24 third piece. The confirmation provides that, gee, you know,
25 the service corps have a termination right, too, an optional

1 termination right, but it says right there with the insurer
2 consent, the service corps may terminate, but then some
3 provisions aren't present in sections in the optional
4 termination provisions of the amended swaps, which for one
5 are 5-X in the UBS swaps and 5-2 for the SBS, now BAML,
6 swaps.

7 Your Honor, I think that the consent issues have
8 been briefed at length. I think that the law is clear that a
9 forbearance is not an amendment at least under New York law.
10 And if your Honor has questions about how these swap
11 agreements work together, that's fine, but I also would point
12 out to your argument -- your Honor there are two other
13 arguments that I think the briefs have responded to. One of
14 those is is this really an end run or an amendment. Is this
15 really an end run to the fact that the service corps aren't
16 supposed to pay anything, and is it really not within the
17 optional termination because it's an impermissible assignment
18 of the right of the banks? I think that's been briefed very
19 well not only by the banks but by ourselves, and I think the
20 answer to that is, your Honor, it is not a sale or
21 assignment. The banks retain the rights to exercise whatever
22 they want under their swap agreements. They only agreed to
23 forbear for a temporary period. Certainly there has been no
24 assignment, and certainly the city does not have the
25 exclusive right to do anything.

1 Finally, your Honor, it's very interesting, at least
2 from a contractual construction point of view, that certain
3 of the objectors argue that the presence of an integration
4 clause, if you went to law school in the past ten years -- if
5 you went to law school in the past -- earlier twenty years,
6 it would have been a merger clause -- that the presence of an
7 integration clause, which is intended to exclude parol
8 evidence, ties different agreements together and says they're
9 one agreement. Actually, your Honor, I think we need to look
10 at that one. Here it was clearly intended to exclude parol
11 evidence. Moreover, your Honor, forbearance agreement
12 involves the service corporations, the city, and the swap
13 counterparties. The collateral agreement involves the city,
14 the swap counterparties, and the service corporations. These
15 other agreements that the objectors would have us say are
16 part of one integrated agreement, different agreements,
17 different parties, different times by design and by consent,
18 so we do think it is a bit of a reach to try to integrate the
19 swap, the collateral agreement, the contract administration
20 agreement into what is merely a forbearance agreement.

21 Your Honor, with that I think that we have met our
22 burden both for the financing and for your Honor's approval
23 of the 9019. I would be happy to answer any questions, and I
24 would like to reserve time to respond to the objectors.

25 THE COURT: Thank you. Stand by, please.

1 MS. BALL: Your Honor, as a matter of housekeeping,
2 my apologies -- I do have the Enron cite.

3 THE COURT: Go ahead.

4 MS. BALL: The Eighth Circuit cite is 913 Fed. 2d
5 846, Contemporary Industries. No. That's -- I'm sorry.
6 Contemporary Industries is 564 Fed. 3d at 985, and the Enron
7 decision, your Honor, Enron, too -- oh, this is -- excuse me,
8 your Honor. Oh, this is the opinion, your Honor. My
9 apologies. It's Enron Creditors Recovery versus Alfa at 651
10 Fed. 2d 329, Second Circuit, 2011. Your Honor, the Lancelot
11 decision is also in our papers, and the Contemporary
12 Industries, as I said, is 564 Fed. 3d, and that's the Eighth
13 Circuit, 2012.

14 THE COURT: Thank you. All right. By my count the
15 city now has 93 minutes remaining. Anything else for today?

16 MR. HAWKINS: Your Honor, a point of order.

17 THE COURT: Sir.

18 MR. HAWKINS: Howard Hawkins for Merrill Lynch. We
19 intend to speak briefly on behalf of the motion. Would your
20 Honor prefer that be Monday morning or right now?

21 THE COURT: It's your choice, sir.

22 MR. HAWKINS: We'd prefer Monday morning, your
23 Honor, I think, and my partner, Mark Ellenberg, who couldn't
24 be here today because of the snow, would like to give the
25 closing. Much as I would enjoy doing it, he's probably

1 better to do it.

2 THE COURT: All right. Thank you, sir. We'll
3 permit that.

4 MR. HAWKINS: So we would do it first before the
5 objectors on Monday?

6 THE COURT: Yes, you would.

7 MR. HAWKINS: Thank you, your Honor.

8 THE COURT: Anything else for today? All right. I
9 will see you all nine o'clock Monday morning in this room.

10 MS. ENGLISH: Thank you, your Honor.

11 THE CLERK: All rise. Court is adjourned.

12 (Proceedings concluded at 4:17 p.m.)

INDEX

<u>WITNESSES:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Kevyn Orr	9	61/109 115/123 140		
Closing Argument by Ms. Ball				171
<u>EXHIBITS:</u>		<u>Marked</u>		<u>Received</u>
City Exhibit 141				40
City Exhibit 142				59
Syncora Exhibit 230				108
FGIC Exhibits 305 and 306				161
Ambac Exhibit 404				162
Retirement Systems Exhibit 1007				139
Retirement Systems Exhibit 1023		135		
Sole Exhibits 1321, 1324, 1325, 1326				166

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

January 10, 2014

Lois Garrett